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TITLE 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

[P. P. C. 621, Revised]

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—PINK BOLLWORM

REVISED ADMINISTRATIVE INSTRUCTIONS DESIGNATING REGULATED AREA

Pursuant to § 301.52-2 of the regulations supplemental to the pink bollworm quarantine (7 CFR 301.52-2, 22 F. R. 7014), issued under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161, 162) and sections 103 and 106 of the Federal Plant Pest Act (Pub. Law 85-36), administrative instructions designating as 7 CFR 301.52-2a (22 F. R. 7016) are hereby revised to read as follows:

§ 301.52-2a *Administrative instructions designating regulated area, eradication area, and generally infested area under the pink bollworm quarantine.*

(a) Infestations of the pink bollworm have been determined to exist, in the quarantined States, in the civil divisions and premises or parts thereof, listed below, or it has been determined that such infestation is likely to exist therein, or it is deemed necessary to regulate such localities because of their proximity to infestation or their inseparability from quarantine enforcement purposes from infested localities. Accordingly, the localities listed are hereby designated as the pink bollworm regulated area within the meaning of the provisions in this subpart:

Arizona. Counties of Cochise, Graham, Greenlee, and Santa Cruz, and all of Pima County except that portion lying west of the west line of Range 9 East.

Arkansas. Counties of Calhoun, Clark, Columbia, Conway, Crawford, Dallas, Franklin, Garland, Hempstead, Hot Springs, Howard, Johnson, Lafayette, Little River, Logan, Miller, Montgomery, Nevada, Ouachita, Perry, Pike, Polk, Pope, Scott, Sebastian, Sevier, Union, Washington, and Yell.

Louisiana. Parishes of Allen, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, Calhoun, De Soto, Iberia, Jefferson Davis, Lafayette, Natchitoches, Red River, Sabine, Saint Martin, Vermillion, Vernon, and Webster.

New Mexico. All counties in the State.
Oklahoma. All counties in the State.
Texas. All counties in the State.

(b) *Eradication area.* All regulated area within the States of Arizona, Arkansas, and Louisiana is hereby designated as eradication area.

(c) *Generally infested area.* All regulated area within the States of New Mexico, Oklahoma, and Texas is hereby designated as generally infested area.

These administrative instructions shall become effective December 10, 1957, when they shall supersede P. P. C. 621, 22 F. R. 7016 which became effective August 31, 1957.

The purposes of this revision are to add to the regulated area the Louisiana Parishes of Iberia, Lafayette, and St. Martin, where pink bollworms were found during the recent 1957 survey, and to remove from a regulated status the Louisiana Parishes of Lincoln and Union, inasmuch as no pink bollworms have been found in Lincoln or Union Parishes in the past three years and the Director of the Plant Quarantine Division has determined that adequate eradication measures have been practiced for a sufficient length of time to eradicate the pink bollworm in Lincoln and Union Parishes and that regulation of such parishes is not otherwise necessary under the regulations.

This revision, in part, imposes restrictions supplementing pink bollworm quarantine regulations already effective. It also relieves restrictions insofar as it revokes the designation of certain regulated area. It must be made effective promptly in order to carry out the purposes of the regulations and to be of maximum benefit in permitting the interstate movement, without restriction under the quarantine, of regulated products from the parishes being removed from designation as regulated area. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to the foregoing revision are impracticable and contrary to the public interest, and good cause is found for making the effective date thereof less

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than 30 days after publication in the FEDERAL REGISTER.

(Sec. 9, 37 Stat. 318, sec. 106, Pub. Law 85-36, 71 Stat. 33; 7 U. S. C. 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 4th day of December 1957.

[SEAL]

E. D. BURGESS,

Director,

Plant Pest Control Division.

[F. R. Doc. 57-10191; Filed, Dec. 9, 1957; 8:50 a. m.]

[P. P. C. 624, Revised]

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—SOYBEAN CYST NEMATODE

REVISION OF ADMINISTRATIVE INSTRUCTIONS DESIGNATING REGULATED AREAS

Pursuant to § 301.79-2 of the regulations supplemental to the soybean cyst nematode quarantine (7 CFR 301.79-2, 22 F. R. 5913), under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161, 162) and sections 103 and 106 of the Federal Plant Pest Act of May 23, 1957 (Pub. Law 85-36; 71 Stat. 32, 33), administrative instructions appearing as 7 CFR 301.79-2a are hereby revised to read as follows:

§ 301.79-2a. *Administrative instructions designating regulated areas under the soybean cyst nematode quarantine.* Infestations of the soybean cyst nematode have been determined to exist in the counties, other civil divisions, farms, and other premises, or parts thereof, listed below, or it has been determined that such infestation is likely to exist therein, or it is deemed necessary to regulate such localities because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. Accordingly, such counties, other civil divisions, farms, other premises, and parts thereof, are hereby designated as soybean cyst nematode regulated areas within the meaning of the provisions in this subpart:

ARKANSAS

Crittenden County. The irregular portion on the eastern boundary of the county between the Mississippi River levee and the indeterminate Arkansas-Tennessee State line, bounded on the north by the Crittenden-Mississippi County line and on the south by an east-west line projected from the levee to the State line, lying one mile south of the intersection of a graded road and the levee at the head of Wapanocca Bayou.

The property known as the Clarence Williams Farm, located in sec. 21, T. 5 N., R. 8 E.

Mississippi County. The irregular portion on the eastern boundary of the county lying between the Mississippi River levee and the indeterminate Arkansas-Tennessee State line.

The property known as the Bert Hardesty Farm, shown on some ownership maps as the E. C. Adkisson Farm, located 1½ miles north and 3¼ miles east of the Town of Armored on State Highway 137, this tract of land being the S½ of SE¼ of sec. 6, T. 15 N., R. 13 E.

That area bounded on the north by the Arkansas-Missouri State line; on the east by the Mississippi River levee; on the south by the south section lines of sec. 30, T. 16 N., R. 13 E., of secs. 25, 26, 27, 28, 29, and 30, T. 16 N., R. 12 E., and of secs. 25, 26, and 27, T. 16 N., R. 11 E.; and on the west by U. S. Highway 61.

That area bounded by a line beginning at the intersection of State Highway 18 and the Mississippi River levee and extending southwest along the levee to the west section line of sec. 4, T. 14 N., R. 12 E., thence due north along the west section lines of sec. 4, T. 14 N., R. 12 E., and of secs. 33, 28, 21, and 16, T. 15 N., R. 12 E. to State Highway 18, and thence east, south, and southeast along said highway to the point of beginning.

The property known as the Milton Bunch Farm, in E½ sec. 21, T. 16 N., R. 11 E.

The property known as the Hughes and Humphries Trustees Farm, in E½ sec. 35, T. 15 N., R. 11 E.

KENTUCKY

Fulton County. All the land owned by Terry Jamerson on the south half of Island No. 8, Mississippi River, in sec. 5, in NW¼ sec. 4, and in E½ sec. 6, T. 1 N., R. 6 W.

All the land owned by Ruby Peyton, in sec. 13, T. 1 N., R. 7 W., in the detached portion of Fulton County.

That portion of the Norman Sutton farm lying between the levee and the Mississippi River, in sec. 12, T. 1 N., R. 7 W.

That portion of the Whitson Bros. farm lying between the levee and the Mississippi River, in secs. 24 and 25, T. 1 N., R. 7 W., in the detached portion of Fulton County.

The Whitson Bros. farm, known as the old L. Everett place, in S½SW¼NE¼ and W½SE¼ sec. 23, T. 1 N., R. 7 W., in the detached portion of Fulton County.

MISSISSIPPI

De Soto County. That portion of secs. 28, 29, 31, and 32, T. 2 S., R. 10 W., lying between the Mississippi River levee and the Mississippi-Arkansas State line.

MISSOURI

New Madrid County. The property owned by J. V. Conran and operated by Dellisle-Pikey Farms, located on the north and south sides of U. S. Highway 61 and 0.8 mile north-east of junction of Mo. Highway M and U. S. Highway 61 at Conran.

The property owned and operated by Charles Pickey and Son, located on the north and south sides of Mo. Highway F and 0.6 mile east of Jaywee intersection.

The property owned and operated by George L. Neumann, located approximately 2.9 miles east of Conran, at the southeast corner where a gravel road turns north after proceeding east ½ mile from its intersection with State Highway M.

Pemiscot County. That portion of the county lying east and south of a line beginning at a point where State Highway B intersects the Pemiscot-New Madrid County line, and extending southward along State Highway B to the point where it joins State Highway 84; thence west along State Highway 84 to a point where the highway joins State Highway C; thence southward along State Highway C to the point where it meets State Highway F; thence due south to the point where it intersects the Missouri-Arkansas State line.

Stoddard County. The property owned by Earnest Kellett and operated by Bern Abernathy, being the W½NE¼ sec. 16, T. 27 N., R. 12 E.

NORTH CAROLINA

Camden County. The property owned and operated by Mack L. Sawyer, located on north side of a black top road and 0.3 mile west of Pierceville.

New Hanover County. That area bounded by a line beginning at the North East Cape Fear River Bridge on A. C. L. Railroad and extending southward along said railroad to Prince George Creek, thence along said creek westward to Highway U. S. 117, thence southward along U. S. 117 to a drain ditch approximately one-tenth mile south of the entrance to the North Carolina Vegetable Research Station, thence in a northwesterly direction to the point where Prince George Creek empties into the North East Cape Fear River, thence upstream following said river to said A. C. L. Railroad bridge.

The property owned and operated by W. A. Buck, located on west side of Highway U. S. 117, across from Wrightsboro school and approximately 1,400 feet north of intersection of Highway U. S. 117 and Winter Park-Wrightsville Road.

The property owned and operated by P. Buis, located on south side of Black Swamp Road approximately 1.6 miles east of Blue Clay Road.

The property owned and operated by J. D. Murray, located at end of Murrayville Road 2.2 miles from the intersection with Black Swamp Road.

The property known as Top Notch Farm, located at the west end of Chair Road and owned by the Peschau Estate.

The property owned and operated by A. G. Seitter, Sr., located on the west side of U. S. Highway 117 and approximately 50 feet north of junction of U. S. Highway 117 and Winter Park-Wrightsville Road.

The property, consisting of two fields, owned and operated by D. Swart and Sons, located 1.3 miles south of intersection of Skippers Corner Road and Atlantic Coastline Railroad and approximately 1 mile east of U. S. Highway 117.

The property owned and operated by Alex Trask, located west of Blue Clay Road beginning at a point approximately 1,000 feet north of intersection of Blue Clay Road and Black Swamp Road and extending northward along Blue Clay Road for approximately 1,400 feet to a ditch separating the Trask and Cox properties.

The property owned and operated by Alex Trask, located on north side of Black Swamp Road and approximately 1.3 miles east of Blue Clay Road.

The property owned and operated by Raiford Trask, located on east side of the Blue Clay Road and bounded on the west by the Blue Clay Road beginning at the intersection of the Blue Clay Road and Black Swamp Road and extending north for 2,400 feet, on the south by the Black Swamp Road beginning at junction of Blue Clay and Black Swamp Roads and extending eastward seven-tenths mile, on the north by a line beginning at northern terminus of west boundary and extending eastward parallel to the south boundary for seven-tenths mile, and on the east by a line connecting the east termini of the north and south boundaries.

The property owned and operated by Raiford Trask, located on east side of Blue Clay Road 1.4 miles north of point where Blue Clay Road crosses A. C. L. Railroad.

The property owned and operated by Raiford Trask as a packing and storage area, located just south of Wrightsboro Station on west side of A. C. L. Railroad; and that property owned and operated by Alex Trask as a packing and storage area, located just south of Wrightsboro Station on east side of A. C. L. Railroad.

Pender County. That area bounded on the north by N. C. Highway 210, on the east by the Moore-Town Road, on the south by the Moore-Town Road and on the west by a line beginning on N. C. Highway 210 four-tenths mile west from the junction of N. C. Highway 210 and the Moore-Town Road and extending due south to Moore-Town Road.

The property owned and operated by P. Brask, known as Marlboro Farm, located on west side of U. S. Highway 117, approximately seven-tenths mile north of Paul's Place. Also that property owned and operated by P. Brask adjoining Marlboro Farm on the south.

The property owned and operated by P. Katalinic, located on east and west side of U. S. Highway 117 at junction of Stag Park Road and U. S. Highway 117.

The property owned and operated by Paul Paskas, located approximately 1.9 miles west of Paul's Place and three-tenths mile north of N. C. Highway 40 (formerly Highway 210).

The property owned and operated by C. Helde Trask, located on south side of N. C. Highway 210 and 1.5 miles west of junction of U. S. Highway 117 and N. C. Highway 210.

The property owned and operated by C. Helde Trask, located on Moore-Town Road four-tenths mile from its intersection with N. C. Highway 210.

The property owned and operated by W. E. Motley, located on east side of Kelly Road and 1.1 miles northeast of junction of Kelly Road and N. C. Highway 40.

The property owned and operated by Henry Clark, located at the intersection of Kelly Road and N. C. Highway 210, being on the north side of N. C. Highway 210 and the east side of Kelly Road, approximately 500 feet north of the intersection of Kelly Road and N. C. Highway 40.

The property owned and operated by Henry Clark, located on the south side of N. C. Highway 40 and 0.2 mile southeast of Bell's Crossroads.

The property owned and operated by W. B. Keith, located on the west side of Clarks Landing Loop Road and one mile southwest of Bell's Crossroads.

TENNESSEE

Dyer County. All of the county except Civil Districts 1, 6, 7, 8, 9, and 15.

Lake County. The entire county.

Lauderdale County. Civil Districts 4, 5, 9, and 13.

Obion County. Civil Districts 5, 9, and 12; and that part of Civil District 13 consisting of the farm of approximately 365 acres owned by R. C. Reynolds, 730 East High Street, Union City, Tennessee, operated by O. T. Baker and located south of the City of Union City, approximately one mile south of the intersection of U. S. Highway 45-W and U. S. Highway 51, lying on the east side of U. S. Highway 45-W and extending southward from this point, between U. S. Highway 45-W and the Gulf, Mobile & Ohio Railroad to the south boundary of the property.

This revision has the effect of adding to the areas now regulated in Crittenden and Mississippi Counties, Arkansas; Fulton County, Kentucky; New Madrid County, Missouri; Camden, New Hanover, and Pender Counties, North Carolina; and Obion County, Tennessee; and revoking the designation as a regulated area of certain portions of Dyer County, Tennessee, where repeated surveys have shown such portions to be free of soybean cyst nematode infestation.

The foregoing administrative instructions shall be effective December 10, 1957, and shall supersede those contained in P. P. C. 624, effective July 26, 1957 (7 CFR 301.79-2a; 22 F. R. 5915), as amended by Amdt. 1, 22 F. R. 8058, effective October 10, 1957.

These instructions should be made effective as soon as possible with respect to the newly regulated areas in order to be of maximum benefit in preventing the interstate spread of the soybean cyst

nematode and with respect to the area removed from regulation in order to be of maximum benefit to affected shippers. Accordingly, pursuant to section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to these instructions are impracticable and contrary to the public interest, and good cause is found for making the effective date thereof less than 30 days after publication in the FEDERAL REGISTER.

(Sec. 9, 37 Stat. 318, sec. 106, Pub. Law 85-36, 71 Stat. 33; 7 U. S. C. 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 4th day of December 1957.

[SEAL] E. D. BURGESS,
Director,
Plant Pest Control Division.

[F. R. Doc. 57-10192; Filed, Dec. 9, 1957;
8:50 a. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 124, Amdt. 1]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b) (1) (i) of § 914.424 (Navel Orange Regulation 124, 22 F. R.

9571) are hereby amended to read as follows:

(i) District 1: 1,062,600 cartons.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: December 5, 1957.

[SEAL] FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 57-10168; Filed, Dec. 9, 1957;
8:45 a. m.]

PART 989—RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

APPROVAL OF BUDGET OF EXPENSES OF RAISIN ADMINISTRATIVE COMMITTEE FOR THE 1957-58 CROP YEAR AND FIXING RATE OF ASSESSMENT FOR SUCH CROP YEAR

On November 13, 1957, notice was published in the FEDERAL REGISTER (22 F. R. 9017) that the Secretary of Agriculture had under consideration a proposed rule to approve a budget of expenses for the Raisin Administrative Committee for the crop year that began on September 1, 1957, and to fix the rate of assessment for that year, as set forth in the said notice. The budget and rate of assessment were unanimously recommended by the committee, pursuant to the provisions of Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.). An opportunity was afforded interested persons to file written data, views, or arguments with respect thereto. None was filed.

After consideration of all available information, including that contained in the said notice, it is hereby found and determined, and, therefore: *It is hereby ordered,* That the budget of expenses of the committee and the rate of assessment for the crop year, which began on September 1, 1957, and will end on August 31, 1958, shall be as follows:

§ 989.308 *Budget of expenses of the Raisin Administrative Committee and rate of assessment for the 1957-58 crop year—(a) Budget of expenses.* Expenses in the amount of \$98,530 are reasonable and are likely to be incurred by the Raisin Administrative Committee for its maintenance and functioning and for the maintenance and functioning of the Raisin Advisory Board for the crop year which began on September 1, 1957 and will end on August 31, 1958.

(b) *Rate of assessment.* Each handler shall pay to the Raisin Administrative Committee, in accordance with the provisions of §§ 989.79 and 989.80, an assessment at the rate of 59 cents (\$0.59) per ton of free tonnage (standard) raisins acquired by him during the crop year which began on September 1, 1957 and will end on August 31, 1958. Such assessment rate is hereby fixed as each

handler's pro rata share of the aforesaid expenses.

It is hereby further found that good cause exists for not postponing the effective date of this document later than the date of its publication in the FEDERAL REGISTER (see section 4 (c) of the Administrative Procedure Act; 5 U. S. C. 1001 et seq.) in that: (1) Deliveries of 1957 crop raisins from producers to handlers have already commenced; (2) the committee must be enabled to obtain assessment funds promptly to defray expenses of administering the program; and (3) handlers should need no additional advance notice for compliance with this regulation. In these circumstances, this document should be made effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated December 4, 1957, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] FRANK E. BLOOD,
Acting Deputy Administrator,
Marketing Services.

[F. R. Doc. 57-10169; Filed, Dec. 9, 1957;
8:46 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

[T. D. 6277]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

AMOUNTS REPRESENTING TAXES AND INTEREST PAID TO COOPERATIVE HOUSING CORPORATION

On October 22, 1957, notice of proposed rule making regarding the regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, under section 216 of the Internal Revenue Code of 1954, relating to amounts representing taxes and interest paid to cooperative housing corporations, was published in the FEDERAL REGISTER (22 F. R. 8290). No objection to the rules proposed was received within the 30-day period prescribed in the notice, nor were there any requests for a public hearing. Accordingly, the regulations as so published are hereby adopted.

[SEAL] RUSSELL O. HARRINGTON,
Commissioner of Internal Revenue.

Approved: December 4, 1957.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

The following regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, are hereby prescribed under section 216 of the Internal Revenue Code of 1954, relating to amounts representing taxes and interest paid to cooperative housing corporation:

Sec.

1.216 Statutory provisions; amounts representing taxes and interest paid to cooperative housing corporation.

1.216-1 Amounts representing taxes and interest paid to cooperative housing corporation.

AUTHORITY: §§ 1.216 and 1.216-1 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

§ 1.216 *Statutory provisions; amounts representing taxes and interest paid to cooperative housing corporation.*

SEC. 216. *Amounts representing taxes and interest paid to cooperative housing corporation—(a) Allowance of deduction.* In the case of a tenant-stockholder (as defined in subsection (b) (2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the taxable year, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of—

(1) The real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or

(2) The interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation on its indebtedness contracted—

(A) In the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) In the acquisition of the land on which the houses (or apartment building) are situated.

(b) *Definitions.* For purposes of this section—

(1) *Cooperative housing corporation.* The term "cooperative housing corporation" means a corporation—

(A) Having one and only one class of stock outstanding.

(B) Each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation.

(C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders.

(2) *Tenant-stockholder.* The term "tenant-stockholder" means an individual who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary or his delegate as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such individual is entitled to occupy.

(3) The term "tenant-stockholder's proportionate share" means that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

§ 1.216-1 *Amounts representing taxes and interest paid to cooperative housing corporation—(a) General rule.* A tenant-stockholder may deduct from his

gross income amounts paid or accrued within his taxable year to a cooperative housing corporation representing certain taxes or interest paid or incurred by the corporation. Such amounts are not allowable as a deduction unless they represent the tenant-stockholder's proportionate share of—

(1) The real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation before the close of the taxable year of the tenant-stockholder on the houses (or apartment building) and the land on which the houses (or apartment building) are situated, or

(2) The interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation before the close of the taxable year of the tenant-stockholder on its indebtedness contracted in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses (or apartment building), or in the acquisition of the land on which the houses (or apartment building) are situated.

(b) *Limitation.* The deduction allowable under section 216 shall not exceed the amount of the tenant-stockholder's proportionate share of the taxes and interest described therein. In case a tenant-stockholder pays or incurs all or a part of his proportionate share of such taxes and interest to the corporation, the amount so paid or incurred which represents taxes and interest is allowable as a deduction if the requirements of section 216 are otherwise satisfied. As used in this section, the tenant-stockholder's proportionate share is that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation, including any stock held by the corporation. If a tenant-stockholder pays or incurs to the corporation an amount on account of such taxes and interest and other items, such as maintenance, overhead expenses, and curtailment of mortgage indebtedness, the amount representing such taxes and interest is an amount which bears the same ratio to the total amount of the tenant-stockholder's payment or liability, as the case may be, as the total amount of the tenant-stockholder's proportionate share of such taxes and interest bears to the total amount of the tenant-stockholder's proportionate share of the taxes, interest, and other items on account of which such payment is made or liability incurred. No deduction is allowable under section 216 for such part of amounts representing the taxes or interest described in that section as is deductible by a tenant-stockholder under any other provision of the Internal Revenue Code of 1954.

(c) *Cooperative housing corporation—(1) One class of stock.* In order to qualify as a "cooperative housing corporation" under section 216, the corporation shall have one and only one class of stock outstanding. However, a special classification of preferred stock, in a nominal amount not exceeding \$100, issued to a Federal housing agency or other governmental agency solely for the purpose of creating a security device on the mortgage indebtedness of the corpora-

tion, will not be considered as a "class of stock" within the meaning of section 216.

(2) *Right of occupancy.* Each stockholder of the corporation must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reason of his ownership of stock in the corporation, that is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

(3) *Distributions.* None of the stockholders of the corporation may be entitled, either conditionally or unconditionally, except upon a complete or partial liquidation of the corporation, to receive any distribution other than out of earnings or profits of the corporation.

(4) *Gross income.* It is a prerequisite to the allowance of a deduction under section 216 that at least 80 percent of the gross income of the corporation for the taxable year of the corporation in which the taxes and interest are paid or incurred is derived from tenant-stockholders.

(d) *Tenant-stockholder.* The term "tenant-stockholder" means an individual who is a stockholder in a cooperative housing corporation, as defined in section 216, and whose stock is fully paid up in an amount at least equal to an amount shown to the satisfaction of the district director as bearing a reasonable relationship to the portion of the fair market value, as of the date of the original issuance of the stock, of the corporation's equity in the building and the land on which it is situated which is attributable to the apartment or housing unit which such individual is entitled to occupy.

(e) *Examples.* The application of section 216 may be illustrated by the following examples, which refer to apartments but which are equally applicable to housing units:

Example (1). The X Corporation is, and at all times since 1957 has been, a cooperative housing corporation within the meaning of section 216. In 1957 it purchased a site and constructed thereon a building with 10 apartments at a total cost of \$200,000. The fair market value of the land and building was likewise \$200,000 at the time of completion of the building. Each apartment is of equal value. Upon completion of the building, the X Corporation mortgaged the land and building for \$100,000, and sold its total authorized capital stock, consisting of 1,000 shares of common stock, for \$100,000. The stock was purchased by 10 individuals, each of whom paid \$10,000 for 100 shares. Each certificate for 100 shares provides that the holder thereof is entitled to a lease of a particular apartment in the building for a specified term of years. Each lease provides that the lessee shall pay his proportionate part of the corporation's expenses. In 1957 the original owner of 100 shares of the common stock of the X Corporation and of the lease to apartment No. 1 made a gift of the stock and lease to A, an individual.

The taxable year of A and of the X Corporation is the calendar year. The corporation computes its taxable income on an accrual method, while A computes his taxable income on the cash receipts and disbursements method. In 1958 the X Corporation incurred expenses aggregating \$13,800, namely, \$4,000 for the real estate taxes on the land and building, \$5,000 for the interest on the mortgage, \$3,000 for the maintenance of the building, and \$1,800 for other expenses. In 1959, A pays the X Corporation \$1,380, representing his proportionate part of the expenses incurred by the corporation. The entire gross income of the X Corporation for 1958 was derived from tenant-stockholders. A is entitled under section 216 to a deduction of \$900 in computing his taxable income for 1959. The deduction is computed as follows:

Shares of stock of X Corporation owned by A	100
Shares of stock of X Corporation owned by 9 other tenant-stockholders	900
Total shares of stock of X Corporation outstanding	1,000
Proportion of outstanding stock of X Corporation owned by A	$\frac{1}{10}$

Expenses incurred by X Corporation:	
Real estate taxes	\$4,000
Interest	5,000
Maintenance	3,000
Other expenses	1,800
	\$13,800

Amount paid by A representing his proportionate part of such expenses ($\frac{1}{10}$ of \$13,800)	1,380
A's proportionate part of real estate taxes and interest based on his stock ownership ($\frac{1}{10}$ of \$9,000)	900
A's proportionate part of total corporate expenses based on his stock ownership ($\frac{1}{10}$ of \$13,800)	1,380
Amount of A's payment representing real estate taxes and interest ($\frac{900}{1380}$ of \$1,380)	900
A's allowable deduction	900

Since the stock which A acquired by gift was fully paid up by his donor in an amount equal to the portion of the fair market value, as of the date of the original issuance of the stock, of the corporation's equity in the land and building which is attributable to apartment No. 1, the requirement of section 216 in this regard is satisfied. The fair market value at the time of the gift of the corporation's equity attributable to the apartment is immaterial.

Example (2). The facts are the same as in example (1) except that the building constructed by the X Corporation contained, in addition to the 10 apartments, business space on the ground floor, which the corporation rented at \$2,400 for the calendar year 1958. The corporation deducted the \$2,400 from its expenses in determining the amount of the expenses to be prorated among its tenant-stockholders. The amount paid by A to the corporation in 1959 is \$1,140 instead of \$1,380. More than 80 percent of the gross income of the corporation for 1958 was derived from tenant-stockholders. A is entitled under section 216 to a deduction of \$743.48 in computing his taxable income for 1959. The deduction is computed as follows:

Expenses incurred by X Corporation	\$13,800.00
Less: Rent from business space	2,400.00
Expenses to be prorated among tenant-stockholders	11,400.00

Amount paid by A representing his proportionate part of such expenses ($\frac{1}{10}$ of \$11,400)	\$1,140.00
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A's proportionate part of real estate taxes and interest based on his stock ownership ($\frac{1}{10}$ of \$9,000)	900.00
A's proportionate part of total corporate expenses based on his stock ownership ($\frac{1}{10}$ of \$13,800)	1,380.00
Amount of A's payment representing real estate taxes and interest ($\frac{900}{1380}$ of \$1,140)	743.48
A's allowable deduction	743.48

Since the portion of A's payment allocable to real estate taxes and interest is only \$743.48, that amount instead of \$900 is allowable as a deduction in computing A's taxable income for 1959.

Example (3). The facts are the same as in example (2) except that the amount paid by A to the X Corporation in 1959 is \$1,000 instead of \$1,140. A is entitled under section 216 to a deduction of \$652.17 in computing his taxable income for 1959. The deduction is computed as follows:

Total amount paid by A	\$1,000.00
A's proportionate part of real estate taxes and interest based on his stock ownership ($\frac{1}{10}$ of \$9,000)	900.00
A's proportionate part of total corporate expenses based on his stock ownership ($\frac{1}{10}$ of \$13,800)	1,380.00
Amount of A's payment representing real estate taxes and interest ($\frac{900}{1380}$ of \$1,000)	652.17
A's allowable deduction	652.17

Since the portion of A's payment allocable to real estate taxes and interest is only \$652.17, that amount instead of \$900 is allowable as a deduction in computing A's taxable income for 1959.

[F. R. Doc. 57-10179; Filed, Dec. 9, 1957; 8:48 a.m.]

[T. D. 6276]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

EMPLOYEE STOCK OPTIONS

On November 18, 1955, notice of proposed rule making regarding the regulations under section 421 of the Internal Revenue Code of 1954, relating to restricted employee stock options, was published in the FEDERAL REGISTER (20 F. R. 8538). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes as set forth below. Except as otherwise specifically provided therein, such regulations shall be applicable to taxable years beginning after December 31, 1953, and ending after August 16, 1954. Final action will be taken subsequently on the proposed regulations set forth in the notice of proposed rule making published in the FEDERAL REGISTER on November 10, 1956 (21 F. R. 8774), relating to employee stock options not meeting the requirements of section 421.

PARAGRAPH 1. Section 1.421-1 (d) (2) is changed in the following respects:

(A) By striking subdivision (i) and inserting a new subdivision (i) in lieu thereof.

(B) By inserting immediately after the fifth sentence of subdivision (ii) the following: "Another example of a formula which meets the requirements of this subdivision is a provision that the option price shall be 95 percent of the fair market value of the stock on the day the option is exercised but not more than \$95."

(C) By striking the words "However, this requirement is" at the beginning of the sixth sentence of subdivision (ii) and inserting in lieu thereof "However, the requirements of this subdivision are".

(D) By inserting immediately after the sixth sentence of subdivision (ii) the following: "For an example of how to determine whether an option which contains a formula meeting the requirements of this subdivision also meets the requirement that the option price must be at least 85 percent of the fair market value of the stock at the time the option is granted, see paragraph (a) (1) of § 1.421-2."

PAR. 2. Section 1.421-2 (a) is changed in the following respects:

(A) By striking the second sentence of subparagraph (3) and inserting the following in lieu thereof: "For rules applicable to the determination whether the employer-employee relationship exists, see section 3401 (c) and the regulations thereunder."

(B) By adding new subparagraph (5) immediately after subparagraph (4) thereof.

PAR. 3. Section 1.421-4 is changed in the following respects:

(A) By revising the last sentence of paragraph (b) (3) (i) to read as follows: "The method used for determining the average fair market value of the stock for any month must be used for all twelve months, except where it is shown that such method cannot be used for any month or does not clearly reflect the average fair market value of the stock for any such month."

(B) By revising the fifth and sixth sentences of paragraph (c) (1) to read as follows: "A mere change in the terms of the option, with respect to the number or price of the shares of stock subject to the option, to reflect a stock dividend or stock split-up is not a modification of the option. In case there is an assumption or substitution of the option by reason of certain corporate transactions, see paragraph (d) of this section."

(C) By revising the first sentence of paragraph (c) (2) to read as follows: "Any change in the terms of an option for the purpose of qualifying the option as a restricted stock option grants additional benefits and, therefore, is a modification."

(D) By substituting the word "an" for the word "the" in the phrase "the employer corporation" in the first sentence of paragraph (d) (1).

(E) By striking paragraph (d) (2) and inserting new subparagraphs (2) to (8) in lieu thereof.

(F) By striking the word "states" in the first sentence of paragraph (f) and substituting the word "stated."

PAR. 4. Section 1.421-5 is changed in the following respects:

(A) By inserting the phrase "or an exchange" immediately after the word "distribution" in the first sentence of paragraph (c) (1).

(B) By inserting the following new material immediately after the fourth sentence of paragraph (d) (1): "The executor, administrator, or such person need not exercise the option within three months after the death of the individual to whom the option was granted for section 421 to be applicable. However, the exercise of the option must be pursuant to the terms of the option, and any change in the terms of the option is subject to the rules of § 1.421-4, relating to the modification, extension, or renewal of the option."

(C) By striking the last two sentences of paragraph (e) and substituting the following: "In such cases, no amount shall be treated as income, and no amount shall be allowed as a deduction, for any taxable year other than the taxable year in which occurs the disposition. However, if the stock was transferred pursuant to the exercise of the option in a taxable year other than the taxable year of the disposition, the extent to which such deduction is allowable shall be determined as if such deduction was claimed for the taxable year of the transfer."

PAR. 5. Section 1.421-6, relating to the effective date of §§ 1.421-1 to 1.421-5, inclusive, is deleted.

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

Approved: December 4, 1957.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

The following regulations are hereby prescribed under section 421 of the Internal Revenue Code of 1954, relating to employee stock options:

Sec.	
1.421	Statutory provisions; employee stock options.
1.421-1	Meaning and use of certain terms.
1.421-2	Restricted stock option.
1.421-3	Exercise of restricted stock option.
1.421-4	Modification, extension, or renewal.
1.421-5	Operation of section 421.

AUTHORITY: §§ 1.421 to 1.421-5 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

§ 1.421 Statutory provisions; employee stock options.

Sec. 421. *Employee stock options*—(a) *Treatment of restricted stock options.* If a share of stock is transferred to an individual pursuant to his exercise after 1949 of a restricted stock option, and no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him—

(1) No income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) No deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable, with respect to the share so transferred; and

(3) No amount other than the price paid under the option shall be considered as re-

ceived by any of such corporations for the share so transferred.

This subsection and subsection (b) shall not apply unless (A) the individual, at the time he exercises the restricted stock option, is an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary of such corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable, or (B) the option is exercised by him within 3 months after the date he ceases to be an employee of such corporations.

(b) *Special rule where option price is between 85 percent and 95 percent of value of stock.* If no disposition of a share of stock acquired by an individual on his exercise after 1949 of a restricted stock option is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him, but, at the time the restricted stock option was granted, the option price (computed under subparagraph (d) (1) (A)) was less than 95 percent of the fair market value at such time of such share, then, in the event of any disposition of such share by him, or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies—

(1) In the case of a share of stock acquired under an option qualifying under clause (i) of subparagraph (d) (1) (A), an amount equal to the amount (if any) by which the option price is exceeded by the lesser of—

(A) The fair market value of the share at the time of such disposition or death, or

(B) The fair market value of the share at the time the option was granted; or

(2) In the case of stock acquired under an option qualifying under clause (ii) of subparagraph (d) (1) (A), an amount equal to the lesser of—

(A) The excess of the fair market value of the share at the time of such disposition or death over the price paid under the option, or

(B) The excess of the fair market value of the share at the time the option was granted over the option price (computed as if the option had been exercised at such time).

In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income.

(c) *Acquisition of new stock.* If stock is received by an individual in a distribution to which section 305, 354, 355, 356, or 1036, or so much of section 1031 as relates to section 1036, applies and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(d) *Definitions.* For purposes of this section—

(1) *Restricted stock option.* The term "restricted stock option" means an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(A) At the time such option is granted—

(i) The option price is at least 85 percent of the fair market value at such time of the stock subject to the option, or

(ii) In case the purchase price of the stock under the option is fixed or determinable under a formula in which the only variable is the value of the stock at any time during a period of 6 months which includes the time the option is exercised, the option price (computed as if the option had been exercised when granted) is at least 85 percent of the value of the stock at the time such option is granted; and

(B) Such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(C) Such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation. This subparagraph shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option either by its terms is not exercisable after the expiration of 5 years from the date such option is granted or is exercised within one year after the date of enactment of this title. For purposes of this subparagraph—

(i) Such individual shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(ii) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and

(D) Such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted, if such option has been granted on or after June 22, 1954.

(2) *Parent corporation.* The term "parent corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(3) *Subsidiary corporation.* The term "subsidiary corporation" means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(4) *Disposition*—(A) *General rule.* Except as provided in subparagraph (B), the term "disposition" includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(i) A transfer from a decedent to an estate or a transfer by bequest or inheritance;

(ii) An exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(iii) A mere pledge or hypothecation.

(B) *Joint tenancy.* The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(5) *Stockholder approval.* If the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(6) *Exercise by estate—(A) In general.* If a restricted stock option is exercised subsequent to the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of this section shall apply to the same extent as if the option had been exercised by the decedent, except that—

(i) The holding period and employment requirements of subsection (a) shall not apply, and

(ii) Any transfer by the estate of stock acquired shall be considered a disposition of such stock for purposes of subsection (b).

(B) *Deduction for estate tax.* If an amount is required to be included under subsection (b) in gross income of the estate of the deceased employee or of a person described in subparagraph (A), there shall be allowed to the estate or such person a deduction with respect to the estate tax attributable to the inclusion in the taxable estate of the deceased employee of the net value for estate tax purposes of the restricted stock option. For this purpose, the deduction shall be determined under section 691 (c) as if the option acquired from the deceased employee were an item of gross income in respect of the decedent under section 691 and as if the amount includible in gross income under subsection (b) of this section were an amount included in gross income under section 691 in respect of such item of gross income.

(e) *Modification, extension, or renewal of option—(1) Rules of application.* For purposes of subsection (d), if the terms of any option to purchase stock are modified, extended, or renewed, the following rules shall be applied with respect to transfers of stock made on the exercise of the option after the making of such modification, extension, or renewal—

(A) Such modification, extension, or renewal shall be considered as the granting of a new option.

(B) The fair market value of such stock at the time of the granting of such option shall be considered as—

(i) The fair market value of such stock on the date of the original granting of the option,

(ii) The fair market value of such stock on the date of the making of such modification, extension, or renewal, or

(iii) The fair market value of such stock at the time of the making of any intervening modification, extension, or renewal,

whichever is the highest.

Subparagraph (B) shall not apply if the aggregate of the monthly average fair market values of the stock subject to the option for the 12 consecutive calendar months before the date of the modification, extension, or renewal, divided by 12, is an amount less than 80 percent of the fair market value of such stock on the date of the original granting of the option or the date of the making of any intervening modification, extension, or renewal, whichever is the highest.

(2) *Definition of modification.* The term "modification" means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) Attributable to the issuance or assumption of an option under subsection (g); or

(B) To permit the option to qualify under subsection (d) (1) (B).

If an option is exercisable after the expiration of 10 years from the date such option

is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.

(f) *Effect of disqualifying disposition.* If a share of stock, acquired by an individual pursuant to his exercise of a restricted stock option, is disposed of by him within 2 years from the date of the granting of the option or within 6 months after the transfer of such share to him, then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred.

(g) *Corporate reorganization, liquidations, etc.* For purposes of this section, the term "issuing or assuming a stock option in a transaction to which subsection (g) is applicable" means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if—

(1) The excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(2) The new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such transaction under this subsection.

§ 1.421-1 *Meaning and use of certain terms—(a) Option.* (1) For the purpose of section 421, the term "option" includes the right or privilege of an individual to purchase stock from a corporation by virtue of an offer of the corporation continuing for a stated period of time, whether or not irrevocable, to sell such stock at a price determined under paragraph (d) of this section, such individual being under no obligation to purchase. Such right or privilege, when granted, must be evidenced in writing. The individual who has such right or privilege is referred to as the optionee and the corporation offering to sell stock under such an arrangement is referred to as the optionor. While no particular form of words is necessary, the written option should express, among other things, an offer to sell at the option price and the period of time during which the offer shall remain open.

(2) An option may be granted as part of or in conjunction with an employee stock purchase plan or subscription contract.

(3) An arrangement between a corporation and an employee may involve more than one option. For example, if a corporation on June 1, 1954, grants to an employee the right to purchase 1,000 shares of its stock on or after June 1, 1955, another 1,000 shares on or after June 1, 1956, and a further 1,000 shares on or after June 1, 1957, all shares to be purchased before June 1, 1958, provided

the employee at the time of exercise of any of the purchase rights is employed by the corporation, such an arrangement will be construed as the grant to the employee on June 1, 1954, of three options, each for the purchase of 1,000 shares. Similarly, if a corporation grants to an employee on January 1, 1955, the right to purchase 1,000 shares of its stock at \$85 per share during 1955, or at \$75 per share during 1956, or at \$65 per share during 1957, such an arrangement will be construed as the grant to the employee on January 1, 1955, of three alternative options, one option for the purchase of 1,000 shares at \$85 per share during 1955, an alternative option for the purchase of 1,000 shares at \$75 per share during 1956, and a third alternative option for the purchase of 1,000 shares at \$65 per share during 1957.

(b) *Time and date of granting of option.* (1) For the purpose of section 421, the words "the date of the granting of the option" and "the time such option is granted", and similar phrases refer to the date or time when the corporation completes the corporate action constituting an offer of stock for sale to an individual under the terms and conditions of a restricted stock option. Ordinarily, if the corporate action contemplates an immediate offer of stock for sale to an individual or to a class including such individual, or contemplates a particular date on which such offer is to be made, the time or date of the granting of the option is the time or date of such corporate action if the offer is to be made immediately, or the date contemplated as the date of the offer, as the case may be. However, an unreasonable delay in the giving of notice of such offer to the individual or to the class will be taken into account as indicating that the corporation contemplated that the offer was to be made at the subsequent date on which such notice is given.

(2) If the corporation imposes conditions on the granting of an option (as distinguished from conditions governing the exercise of the option), such conditions shall be given effect in accordance with the intent of the corporation. A special rule is provided by section 421 (d) (5) for options subject to stockholder approval. If the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval. A condition which does not require corporate action, such as the approval of some regulatory or governmental agency, for example, a stock exchange or the Securities and Exchange Commission, is ordinarily considered a condition upon the exercise of the option unless the corporate action clearly indicates that the option is not to be granted until such condition is satisfied. If an option is granted to an individual upon the condition that such individual will become an employee of the corporation granting the option or of its parent or subsidiary corporation, such option is not granted prior to the date the individual becomes such an employee.

(3) In general, conditions imposed upon the exercise of an option will not operate to make ineffective the granting of the option. For example, on June 1,

1954, the A Corporation grants to X, an employee, an option to purchase 5,000 shares of the corporation stock, exercisable by X on or after June 1, 1955, provided he is employed by the corporation on June 1, 1955. Such an option is granted to X on June 1, 1954.

(c) *Stock.* For the purpose of section 421, the term "stock" means capital stock of any class, including voting or nonvoting common or preferred stock. The term includes both treasury stock and stock of original issue. Special classes of stock authorized to be issued to and held by employees are within the scope of the term "stock" as used in section 421, provided such stock otherwise possesses the rights and characteristics of capital stock.

(d) *Option price.* (1) For the purpose of section 421, the term "option price" or "price paid under the option" means the consideration in money or property which, pursuant to the terms of the option, is the price at which the stock subject to the option is purchased.

(2) With respect to its option price, a restricted stock option must, when granted, meet either of the following requirements:

(i) The option price must be fixed or determinable at the time the option is granted; or

(ii) In the case of an option exercised during any taxable year of the optionee which begins after December 31, 1953, and ends after August 16, 1954, the option must provide that such price shall be determined by a formula in which the only variable is the value of the stock at any time during a period of six consecutive months which includes the day on which such option is exercised. Such formula may provide for determining such price by reference to such value on any particular day in such six-month period, or by reference to an average value of the stock over either the whole of such six-month period or over any shorter period included in such six-month period. Such six-month period may begin with, end with, or in any other manner span the day on which such option is exercised. Such formula may also depend upon factors other than such value of the stock, but such other factors must not be variable and must be fixed in the option when granted. For example, such formula may provide that the option price shall be 85 percent of the value of the stock on the day the option is exercised, but such price shall not be less than \$85, nor more than \$110. Another example of a formula which meets the requirements of this subdivision is a provision that the option price shall be 95 percent of the fair market value of the stock on the day the option is exercised but not more than \$95. However, the requirements of this subdivision are not met by a formula which provides that if the profits of the employer for the year do not exceed \$100,000, the option price shall be \$15 under the fair market value of the stock at the time the option is exercised, but if such profits exceed \$100,000, the option price shall be \$20 under such value of the stock. For an example of how to determine whether an option which contains a formula

meeting the requirements of this subdivision also meets the requirement that the option price must be at least 85 percent of the fair market value of the stock at the time the option is granted, see paragraph (a) (1) of § 1.421-2.

An option which does not meet the requirements of either subdivision (i) or (ii) of this subparagraph when granted, will not be treated as a restricted stock option unless it is subsequently changed to meet such requirements. In case of such a change, see § 1.421-4 (c) (2).

(e) *Exercise.* For the purpose of section 421, the term "exercise", when used in reference to an option, means the act of acceptance by the optionee of the offer to sell contained in the option. In general, the time of exercise is the time when there is a sale or a contract to sell between the corporation and the individual. An agreement or undertaking by the employee to make payments under a stock purchase plan does not constitute the exercise of an option so long as the payments made remain subject to withdrawal by the employee.

(f) *Transfer.* For the purpose of section 421, the term "transfer", when used in reference to the transfer to an individual of a share of stock pursuant to his exercise of a restricted stock option, means the transfer of ownership of such share, or the transfer of substantially all the rights of ownership. Such transfer must, within a reasonable time, be evidenced on the books of the corporation.

§ 1.421-2 Restricted stock option—(a)

In general. (1) A "restricted stock option" is an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but, except in the case of options described in subparagraph (2) of this paragraph, only if—

(i) At the time such option is granted the option price is at least 85 percent of the fair market value at such time of the stock subject to the option; and

(ii) Such option by its terms is not transferable by such individual otherwise than by will or by the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(iii) Such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock either of the employer corporation or of its parent or subsidiary corporation; and

(iv) In the case of options granted after June 21, 1954, such option by its terms is not exercisable after the expiration of ten years from the date on which such option was granted.

For the purpose of applying the rule of subdivision (i) of this subparagraph if the option price is determined by a formula described in § 1.421-1 (d) (2) (ii), the option price shall, notwithstanding any provision of the option, be computed as if such option is exercised on the day when it is granted. For example, if on June 15, 1954, an option is granted

providing that the option price shall be \$10 under the average value of the stock during the month preceding the month in which the option is exercised, and if on June 15, 1954, the value of the stock subject to the option is \$100 a share, to determine if the option meets the requirement of subdivision (i) of this subparagraph, it is necessary to determine the average value of the stock during the month of May 1954. If such average value is \$95 or more, the option meets the requirement of subdivision (i) of this subparagraph.

(2) Regardless of the extent to which the individual to whom the option is granted owns stock of either the employer corporation, or of its parent or subsidiary corporation, an option is a restricted stock option if—

(i) Such option is granted after February 26, 1945, to such individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations; and

(ii) At the time such option is granted the option price is at least 110 percent of the fair market value at such time of the stock subject to the option; and

(iii) Such option by its terms is not transferable by such individual otherwise than by will or by the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(iv) Such option by its terms is not exercisable after the expiration of five years from the date on which such option was granted, or such option is exercised before August 17, 1955.

(3) At the time the option is granted, the relationship between the individual to whom an option is granted and the corporation granting the option (or a corporation which is a parent or subsidiary thereof) must be the legal and bona fide relationship of employer and employee. For rules applicable to the determination whether the employer-employee relationship exists, see section 3401 (c) and the regulations thereunder. An option granted before employment or after termination of employment is not a restricted stock option. As to the granting of an option conditioned upon employment, see § 1.421-1 (b) (2). The option must be granted for a reason connected with the individual's employment by the corporation or by its parent or subsidiary corporation.

(4) An option may qualify as a restricted stock option only if, under the terms of the option, it is not transferable (other than by will or by the laws of descent and distribution) by the individual to whom it is granted, and is exercisable, during the lifetime of such individual, only by him. Accordingly, an option which is transferable by the individual to whom it is granted during his lifetime, or is exercisable during such individual's lifetime by another person, is not a restricted stock option. However, in case the option contains a provision permitting the individual to whom the option was granted to designate the person who may exercise the option after his death, neither such provision, nor a designation pursuant to such pro-

vision, disqualifies the option as a restricted stock option.

(5) Any reasonable valuation methods may be used for the purpose of determining whether at the time the option is granted the option price is at least 85 percent of the fair market value at such time of the stock subject to the option. Such methods include the valuation methods described in § 20.2031-2 of this chapter (the Estate Tax Regulations).

(b) *Ownership of 10 percent of stock.* In determining the amount of stock owned by an individual, for the purpose of applying the 10 percent test of section 421 (d) (1) (C), stock of the employer corporation or of its parent or subsidiary owned (directly or indirectly) by or for such individual's brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants, shall be considered as owned by such individual. Also, for such purpose, if a domestic or foreign corporation, partnership, estate, or trust owns (directly or indirectly) stock of the employer corporation or of its parent or subsidiary, such stock shall be considered as being owned proportionately by or for the shareholders, partners, or beneficiaries of the corporation, partnership, estate, or trust.

§ 1.421-3 *Exercise of restricted stock option.* (a) The special rules of income tax treatment provided in section 421 (a) and (b) are applicable only if the following conditions exist with respect to the transfer of a share of stock to an individual:

(1) The share of stock is transferred to the individual pursuant to his exercise after 1949 of a restricted stock option; and

(2) At the time the option is exercised by him, the individual is an employee of the corporation granting such option (or parent or subsidiary thereof), or of a corporation (or parent or subsidiary thereof) which issued or assumed the option under section 421 (g) (see § 1.421-4 (d)), or was an employee of any such corporations within three months before the date the option is exercised.

(b) (1) Section 421 is applicable to the exercise of a restricted stock option only if at the time the individual exercises the option he is a bona fide employee of the corporation granting the option, or of a corporation which is at the time the option is exercised a parent or subsidiary of such corporation, unless the old option has been assumed or a new option has been issued in its place under section 421 (g). See § 1.421-4 (d). In case of such an assumption of the old option or such issuance of a new option, the individual exercising the option must, at the time he exercises the option, be a bona fide employee of the corporation so assuming or issuing the option, or a parent or subsidiary of such corporation. Section 421 is also applicable if the individual exercising the option was a bona fide employee of any of such corporations within three months before the exercise of the option.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). On June 1, 1954, X Corporation granted a restricted stock option to A, an employee of X Corporation, to purchase a share of X stock. On February 1, 1955, X sold the plant where A was employed to M Corporation, an unrelated corporation, and A was employed by M. If A exercises this restricted stock option on June 1, 1955, section 421 is not applicable to such exercise, because on June 1, 1955, A is not employed by the corporation which granted the option or by a parent or subsidiary of such corporation. Nor was he employed by any of such corporations within three months before June 1, 1955.

Example (2). Assume the facts to be the same as in example (1), except that when A was employed by M Corporation, the option to purchase X stock was terminated, and was replaced by an option to buy M stock in such circumstances that M Corporation is treated as a corporation issuing an option under section 421 (g). If A exercises the option to purchase the share of M stock on June 1, 1955, section 421 is applicable for A is then employed by a corporation which issued an option under section 421 (g).

(c) (1) The determination whether an option ultimately exercised is a restricted stock option is made as of the date such option is granted. An option which is a restricted stock option when granted does not lose its character as such an option by reason of subsequent events, and an option which is not a restricted stock option when granted does not become such an option by reason of subsequent events. See, however, § 1.421-4, relating to modification, extension, or renewal of an option.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). S-1 Corporation is a subsidiary of S Corporation which, in turn, is a subsidiary of P Corporation. On June 1, 1954, P grants to an employee of P a restricted stock option to purchase a share of stock of S-1. On January 1, 1955, S sells a portion of the S-1 stock which it owns to an unrelated corporation and, as of that date, S-1 ceases to be a subsidiary of S. On May 1, 1955, while still employed by P, the employee exercises his option to purchase a share of S-1 stock. The employee has exercised a restricted stock option.

Example (2). Assume P grants an option to an employee under the same facts as in example (1) above, except that on June 1, 1954, S-1 is not a subsidiary of either S or P. Such option is not a restricted stock option on June 1, 1954. On January 1, 1955, S purchases from an unrelated corporation a sufficient number of shares of S-1 stock to make S-1, as of that date, a subsidiary of S. On May 1, 1955, while still employed by P, the employee exercises his option to purchase a share of S-1 stock. The employee has not exercised a restricted stock option.

(d) For the rules applicable to an exercise of a restricted stock option by the estate of the individual to whom the option was granted, or by a person who acquired the option by bequest or inheritance or by reason of the death of such individual, see § 1.421-5 (d).

§ 1.421-4 *Modification, extension, or renewal.*—(a) *In general.* Section 421 (e) provides the rules for determining whether a share of stock transferred to an individual upon his exercise of an option, after the terms thereof have been modified, extended, or renewed, is transferred pursuant to the exercise of a re-

stricted stock option. Such rules and the rules of this section are applicable to modifications, extensions, or renewals (or to changes which are not treated as modifications) in the case of an exercise of an option in any taxable year of the optionee which begins after December 31, 1953, and ends after August 16, 1954.

(b) *Effect of a modification, extension, or renewal.* (1) Any modification, extension, or renewal of the terms of an option to purchase stock shall be considered as the granting of a new option.

(2) Except as otherwise provided in subparagraph (3) of this paragraph, in case of a modification, extension, or renewal of an option, the highest of the following values shall be considered to be the fair market value of the stock at the time of the granting of such option for the purpose of applying the rule of section 421 (d) (1) (A)—

(i) The fair market value on the date of the original granting of the option,

(ii) The fair market value on the date of the making of such modification, extension, or renewal, or

(iii) The fair market value at the time of the making of any intervening modification, extension, or renewal.

(3) (i) The rules of subparagraph (2) of this paragraph do not apply if the aggregate of the monthly average fair market values of the stock subject to the option for the 12 consecutive calendar months preceding the month in which the modification, extension, or renewal occurs, divided by 12, is an amount less than 80 percent of the fair market value of such stock on the date of the original granting of the option or the date of the making of any intervening modification, extension, or renewal, whichever is the highest. In such case, any modification, extension, or renewal of the option is treated as the granting of a new option but only the fair market value of the stock subject to the option at the time of the modification, extension, or renewal is considered in determining whether the option is a restricted stock option. In the case of stocks listed on a stock exchange, the average fair market value of the stock for any month may be determined by adding the highest and lowest quoted selling prices during such month and dividing the sum by two. The method used for determining the average fair market value of the stock for any month must be used for all twelve months, except where it is shown that such method cannot be used for any month or does not clearly reflect the average fair market value of the stock for any such month.

(ii) The application of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. On June 1, 1954, a restricted stock option was granted to purchase before July 1, 1955, a share of stock for \$85. The fair market value of such stock on June 1, 1954, was \$100. On June 15, 1955, when the fair market value of the stock is \$60, such option is extended so that it is exercisable at any time before July 1, 1956, at \$55 a share. The average fair market value of the stock subject to the option for each of the 12 calendar months preceding June 1955, is as follows:

1954	1955
June ----- \$100	January ----- \$90
July ----- 90	February ----- 80
August ----- 80	March ----- 70
September ----- 70	April ----- 60
October ----- 80	May ----- 60
November ----- 80	
December ----- 90	

The aggregate of such values is \$950. When this sum is divided by 12, the result is \$79.17, which is an amount less than 80 percent of the fair market value of the stock (\$100) when the option was granted. Accordingly, when the option is extended on June 15, 1955, the option price could have been reduced as low as \$51 (85 percent of the fair market value of the stock on such day) without disqualifying the option as a restricted stock option. If the aggregate fair market values of the stock so ascertained had amounted to \$960 or more, the rules of subparagraph (2) of this paragraph would have been applicable with the result that any reduction in the option price would have disqualified the option as a restricted stock option.

(c) *Definition of modification, extension, or renewal.* (1) The time or date when an option is modified, extended, or renewed shall be determined, insofar as applicable, in accordance with the rules governing determination of the time or date of granting an option provided in § 1.421-1 (b). For the purpose of section 421, the term "modification" means any change in the terms of the option which gives the optionee additional benefits under the option. For example, a change in the terms of the option, which shortens the period during which the option is exercisable, is not a modification. However, a change, which accelerates the time when the option is first exercisable, or which provides more favorable terms for the payment for the stock purchased under the option, is a modification. A mere change in the terms of the option, with respect to the number or price of the shares of stock subject to the option, to reflect a stock dividend or stock split-up is not a modification of the option. In case there is an assumption or substitution of the option by reason of certain corporate transactions, see paragraph (d) of this section. Where an option is amended solely to increase the number of shares subject to the option, such increase shall not be considered as a modification of the option, but shall be treated as the grant of a new option for the additional shares.

(2) Any change in the terms of an option for the purpose of qualifying the option as a restricted stock option grants additional benefits and, therefore, is a modification. For example, if an option was granted to purchase for \$80 a share of stock, the fair market value of which was \$100 at such time, and if later the option price is increased to \$85 in order to meet the requirement of section 421 (d) (1) (A), such change is a modification of the option, although the price is increased. Accordingly, the option, despite the change, is not a restricted stock option if the fair market value of the share is more than \$100 when the price is increased. However, if the terms of an option are changed to provide that the optionee cannot transfer the option except by will or by the laws of descent and distribution, such change is not a modification, provided the option is at

the same time changed so that it is not exercisable after the expiration of ten years from the date the option was granted.

(3) An extension of an option refers to the granting by the corporation to the optionee of an additional period of time within which to exercise the option beyond the time originally prescribed. A renewal of an option is the granting by the corporation of the same rights or privileges contained in the original option on the same terms and conditions. The rules of this paragraph apply as well to successive modifications, extensions, and renewals.

(d) *Assumption or substitution of restricted stock options in connection with certain corporate transactions.* (1) Where, by reason of a corporate transaction, as defined in this paragraph, an employer corporation, or its parent or subsidiary corporation, assumes an existing option, or issues a new option in place of the old option, such assumption or issuance is not a modification, if—

(i) The excess of the aggregate fair market value of the stock subject to the option immediately after such assumption or issuance over the aggregate option price is not more than the excess of the aggregate fair market value of the stock subject to the option immediately before such assumption or issuance over the aggregate option price, and

(ii) Such assumption of the old option, or issuance of the new option, does not give the optionee additional benefits under the option.

For the purpose of this paragraph, the term "corporate transaction" means a corporate merger, consolidation, purchase or acquisition of property or stock, separation, reorganization, or liquidation. Thus, for this purpose, a "corporate transaction" includes a taxable transaction (such as, a purchase of stock or property for cash) and any corporate reorganization (whether or not it comes within the definition of such term in section 368) and any corporate liquidation (whether or not section 332 is applicable).

(2) (i) Section 421 (g) provides rules under which a new employer, or parent or subsidiary of a new employer, may by reason of a corporate transaction assume a restricted stock option granted by the former employer or parent or subsidiary thereof, or issue a new restricted stock option in place of the option granted by the former employer or parent or subsidiary thereof, without having such assumption or substitution considered a modification of the option. For example, section 421 (g) may apply where there is a merger of X Corporation into Y Corporation and Y Corporation wishes to employ the employees of X Corporation and to assume restricted stock options which had been granted to them by their former employer, X Corporation. Another example is where X Corporation forms a new subsidiary, Y Corporation, and transfers to it certain assets and employees, and where Y Corporation wishes to grant to such employees a restricted stock option to purchase its stock in place of the re-

stricted stock option which they had to purchase stock of X Corporation.

(ii) Section 421 (g) also provides rules under which a new parent or subsidiary corporation of the employer corporation may by reason of a corporate transaction assume a restricted stock option granted by the employer or parent or subsidiary thereof, or issue a new restricted stock option in place of the option granted by the employer or parent or subsidiary thereof, without having such assumption or substitution considered a modification of the option. Section 421 (g) may apply, for example, where X Corporation acquires a new subsidiary, Y Corporation, by purchase of stock and desires to grant to the employees of Y Corporation a restricted stock option to buy stock of X Corporation in place of the restricted stock option which they have to purchase the stock of Y Corporation.

(iii) Section 421 (g) applies only when the assumption or substitution occurs by reason of a corporate transaction as defined in this paragraph. Thus, section 421 (g) may apply where a result of a corporate transaction a restricted stock option can no longer be exercised, or if exercised, section 421 would not apply (see the first example in subdivision (i) of this subparagraph). Moreover, section 421 (g) may apply in any case where the reason for the assumption or substitution grows out of a corporate transaction even though there could have been a valid exercise under section 421 of the original option (see the second example in subdivision (i) of this subparagraph and the example in subdivision (ii) of this subparagraph). However, a corporation which has issued an option may not substitute a new option for such option under section 421 (g).

(3) For section 421 (g) to apply, it is not necessary to show that the corporation assuming or substituting the option is under any obligation to do so. In fact, section 421 (g) may apply where the option which is being assumed or replaced expressly provides that it will terminate upon the occurrence of certain corporate transactions. However, section 421 (g) cannot be applied to revive a restricted stock option which, for reasons not related to the corporate transaction, expires before it can properly be assumed or replaced under section 421 (g). For section 421 (g) to apply, the assumed or substituted option must qualify as a restricted stock option.

(4) Section 421 (g) does not apply if the terms of the assumed or substituted option confer on the employee more favorable benefits than he had under the old option. Thus, section 421 (g) would not apply if the old option had just two years to run but the new option has more than two years to run.

(5) For the purpose of applying section 421 (g), the assumption or substitution shall be considered to occur at the time that the optionee would, except for section 421 (g), be considered to have been granted the option which the employer corporation, or parent or subsidiary thereof, is issuing or assuming. An assumption or substitution which occurs by reason of a corporate transaction may occur before or after the corporate transaction.

(6) In order to have a substitution of an option under section 421 (g) the optionee must, in connection with the corporate transaction, lose his rights under the old option. There cannot be a substitution of a new option for an old option within the meaning of section 421 (g) if it is contemplated that the optionee may exercise both the old option and the new option. It is not necessary, however, to have a complete substitution of a new option for the old option. For example, assume that X Corporation forms a new corporation, Y Corporation, by a transfer of certain assets and distributes the stock of Y Corporation to the shareholders of X Corporation. Assume further that E, an employee of X Corporation, is thereafter an employee of both X Corporation and Y Corporation. Y Corporation wishes to substitute an option to purchase some of its stock for the restricted stock option which employee E has, entitling him to purchase 100 shares of the stock of X Corporation. The option to purchase the stock of X Corporation, at \$42.50 a share, was granted when the stock had a fair market value of \$50 a share, and the stock was worth \$100 a share just before the distribution of the new corporation's stock to the shareholders of X Corporation. The stock of X Corporation and of Y Corporation is worth \$50 a share just after such distribution, which also is the time of the substitution. On these facts an option to purchase 200 shares of stock of Y Corporation at \$21.25 a share could be given to the employee in complete substitution for the old option. It would also be permissible to give the employee an option to purchase 100 shares of stock of Y Corporation at \$21.25 a share in substitution for his right to purchase 50 of the shares covered by the old option.

(7) Any reasonable methods may be used to determine the fair market value of the stock subject to the option immediately before the assumption or substitution and the fair market value of the stock subject to the option immediately after the assumption or substitution. Such methods include the valuation methods described in § 20.2031-2 of this chapter (the Estate Tax Regulations). In the case of stock listed on a stock exchange, the fair market value may be based on the last sale before and the first sale after the assumption or substitution if such sales clearly reflect the fair market value of the stock, or may be based upon an average selling price during a longer period, such as the day or week before, and the day or week after, the assumption or substitution. If the stocks are not listed, or if they are newly issued, it will be reasonable to base the determination on experience over even longer periods. In the case of a merger, consolidation, or other reorganization which is arrived at by arm's length negotiations, the fair market value of the stocks subject to the option before and after the assumption or substitution may be based upon the values assigned to the stock for purposes of the reorganization. For example, if in the case of a merger the parties treat each share of the merged company as being equal in value to a share of the

surviving company, it will be reasonable to assume that the stocks are of equal value so that the substituted option may permit the employee to purchase at the same price one share of the surviving company for each share he could have purchased of the merged company.

(8) For the purpose of applying section 421 (g), the determination of whether the parent-subsidiary relationship exists shall be based upon circumstances existing immediately after the corporate transaction.

(e) *Effect on qualification.* A restricted stock option may, as a result of a modification, extension, or renewal, thereafter cease to be a restricted stock option, or any option may, by modification, extension, or renewal, thereafter become a restricted stock option.

(f) *Examples.* The rule stated in section 421 (e) may be illustrated by the following examples:

Example (1). On June 1, 1954, the X Corporation grants to an employee an option to purchase 100 shares of the stock of X Corporation at \$90 per share, such option to be exercised on or before June 1, 1956. At the time the option is granted, the fair market value of the X Corporation stock is \$100 per share. On February 1, 1955, before the employee exercises the option, X Corporation modifies the option to provide that the price at which the employee may purchase the stock shall be \$80 per share. On February 1, 1955, the fair market value of the X Corporation stock is \$90 per share. Under section 421 (e), the X Corporation is deemed to have granted an option to the employee on February 1, 1955. Unless the value of the stock has substantially declined making paragraph (b) (3) of this section applicable, such option shall be treated as an option to purchase at \$80 per share 100 shares of stock having a fair market value of \$100 per share, that is, the higher of the fair market value of the stock on June 1, 1954, and on February 1, 1955. The exercise of such option by the employee after February 1, 1955, is not the exercise of a restricted stock option.

Example (2). On June 1, 1954, the X Corporation grants to an employee a restricted stock option to purchase 100 shares of X Corporation stock at \$90 per share, exercisable after December 31, 1955, and on or before June 1, 1956. On June 1, 1954, the fair market value of X Corporation's stock is \$100 per share. On February 1, 1955, X Corporation modifies the option to provide that the option shall be exercisable on or after February 1, 1955, and on or before June 1, 1956. On February 1, 1955, the fair market value of X Corporation stock is \$110 per share. Under section 421 (e), X Corporation is deemed to have granted an option to the employee on February 1, 1955, to purchase at \$90 per share 100 shares of stock having a fair market value of \$110 per share, that is, the higher of the fair market value of the stock on June 1, 1954, and on February 1, 1955. The exercise of such option by the employee is not the exercise of a restricted stock option.

Example (3). The facts are the same as in example (1), except that the employee exercised the option to the extent of 50 shares on January 15, 1955, before the date of the modification of the option. Any exercise of the option after February 1, 1955, the date of the modification, is not the exercise of a restricted stock option. See example (1) in this paragraph. The exercise of the option on January 15, 1955, pursuant to which 50 shares were acquired, is the exercise of a restricted stock option.

Example (4). On June 1, 1954, the X Corporation grants to an employee an option

to purchase 100 shares of the stock of X Corporation at \$80 per share, such option to be exercised on or before June 1, 1956. At the time the option is granted, the fair market value of the X Corporation stock is \$100 per share. On February 1, 1955, before the employee exercises the option, the X Corporation modifies the option to provide that the number of shares of stock which the employee may purchase at \$80 per share will be 250. On February 1, 1955, the fair market value of the X Corporation stock is \$90 per share. Under these facts, the X Corporation has granted two options, one option (not a restricted stock option) with respect to 100 shares having been granted on June 1, 1954, and the other option (a restricted stock option) with respect to the additional 150 shares having been granted on February 1, 1955. In the absence of facts identifying which option is exercised first, the employee will be deemed to have exercised the options in the order in which they were granted.

§ 1.421-5 Operation of section 421—

(a) *Rules applicable to all restricted stock options—*(1) *In general.* If a share of stock is transferred to an individual pursuant to his timely exercise of a restricted stock option and is not disposed of by him within two years from the date of the granting of the option nor within six months after the transfer of such share to him, then, under section 421 (a)—

(i) No income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(ii) No deduction under section 162 shall be allowable at any time to the employer corporation of such individual or its parent or subsidiary corporation, or to a corporation which assumed or issued the option under section 421 (g), with respect to the share so transferred; and

(iii) No amount other than the option price shall be considered as received by any of such corporations for the share so transferred.

For the purpose of subdivisions (i), (ii), and (iii) of this subparagraph, each share of stock transferred pursuant to a restricted stock option is treated separately. For example, if an individual, while employed by a corporation granting him a restricted stock option, exercises the option with respect to part of the stock covered by the option, and if such individual exercises the balance of the option more than three months after leaving such employment, the application of section 421 to the stock obtained upon the earlier exercise of the option is not affected by the fact that the income taxes of the employer and the individual with respect to the stock obtained upon the later exercise of the option are not determined under section 421.

(2) *Holding period.* The special rules provided in section 421 (a) are not applicable if the individual disposes of the share of stock within two years from the date the option is granted or within six months after the transfer of such share to him. Section 421 is not made inapplicable by a transfer within the 2-year or 6-month period if such transfer is not a disposition of the stock as defined in subparagraph (3) of this paragraph, for example, a transfer from the decedent

to his estate or a transfer by bequest or inheritance. Similarly, a disposition by the executor, administrator, heir, or legatee is not a disposition by the decedent. In case a restricted stock option is exercised by the estate of the individual to whom the option was granted, or by a person who acquired the option by bequest or inheritance or by reason of the death of such individual, see paragraph (d) of this section.

(3) *Disposition of stock.* (i) For the purpose of section 421, the term "disposition" includes a sale, exchange, gift, or any transfer of legal title, but does not include—

(a) A transfer from a decedent to his estate or a transfer by bequest or inheritance; or

(b) An exchange which occurs in a taxable year of the optionee beginning after December 31, 1953, and ending after August 16, 1954, and to which is applicable section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) or a corresponding provision of the Internal Revenue Code of 1939; or

(c) A mere pledge or hypothecation.

However, a disposition of the stock pursuant to a pledge or hypothecation is a disposition by the individual, even though the making of the pledge or hypothecation is not such a disposition.

(ii) If an individual exercises a restricted stock option, a share of stock acquired pursuant to such exercise is not considered disposed of by the individual if such share is taken in the name of the individual and another person jointly with right of survivorship, or is subsequently transferred into such joint ownership, or is retransferred from such joint ownership to the sole ownership of the individual. However, any termination of such joint ownership is a disposition of such share, except to the extent that the individual reacquires ownership of the share. For example, if such individual and his joint owner transfer such share to another person, the individual has made a disposition of such share. Likewise, if a share of stock held in the joint names of such individual and another person is transferred to the name of such other person, there is a disposition of such share by the individual. If an individual exercises a restricted stock option and a share of stock is transferred to another or is transferred to such individual in his name as trustee for another, the individual has made a disposition of such share.

(4) *Examples.* The rules of section 421 (a) may be illustrated by the following examples:

Example (1). On June 1, 1954, the X Corporation grants to E, an employee, a restricted stock option to purchase 100 shares of X Corporation stock at \$95 per share. On that date, the fair market value of X Corporation stock is \$100 per share. On June 1, 1955, while employed by X Corporation, E exercises the option in full and pays X Corporation \$9,500, and on that day X Corporation transfers to E 100 shares of its stock having a fair market value of \$12,000. Before June 1, 1956, E makes no disposition of the 100 shares so purchased. E realizes no income on June 1, 1955, with respect to the transfer to him of the 100 shares of X Corporation stock. X Corporation is not entitled to any deduction at any time with respect to its

transfer to E of the stock. E's basis for such 100 shares is \$9,500.

Example (2). Assume, in example (1), that on August 1, 1956, two years and one month after the granting of the option and one year and one month after the transfer of the shares to him, E sells the 100 shares of X Corporation stock for \$13,000, which is the fair market value of the stock on that date. For the taxable year in which the sale occurs, E realizes a gain of \$3,500 (\$13,000 minus E's basis of \$9,500), which is treated as long-term capital gain.

Example (3). Assume, in example (2), that on August 1, 1956, E makes a gift of the 100 shares of X Corporation stock to his son. Such disposition results in no realization of gain to E either for the taxable year in which the option is exercised or the taxable year in which the gift is made. E's basis of \$9,500 becomes the donee's basis for determining gain or loss.

Example (4). Assume, in example (1), that on May 1, 1956, one year and 11 months after the granting of the option and 11 months after the transfer of the shares to him, E sells the 100 shares of X Corporation stock for \$13,000. The special rules of section 421 (a) are not applicable to the transfer of the stock by X Corporation to E, because disposition of the stock was made by E within two years from the date the option was granted. See paragraph (e) of this section for the effect of a disqualifying disposition.

Example (5). Assume, in example (1), that E dies on September 1, 1955, owning the 100 shares of X Corporation stock acquired by him pursuant to his exercise on June 1, 1955, of the restricted stock option. On the date of death, the fair market value of the stock is \$12,500. No income is realized by E by reason of the transfer of the 100 shares to his estate. If the stock is valued as of the date of E's death for estate tax purposes, the basis of the 100 shares in the hands of the executor is \$12,500.

(b) *Additional rules applicable where the option price is between 85 percent and 95 percent of the value of the stock—*

(1) *In general.* (i) If all the conditions necessary for the application of section 421 (a) exist, section 421 (b) provides additional rules which are applicable in cases where, at the time the restricted stock option is granted, the option price per share is less than 95 percent (but not less than 85 percent) of the fair market value of such share. In such case, upon the disposition of such share by the individual after the expiration of the 2-year and the 6-month periods, or upon his death while owning such share (whether occurring before or after the expiration of such periods), there shall be included in the individual's gross income as compensation (and not as gain upon the sale or exchange of a capital asset) an amount determined in the following manner. If the option qualified under section 421 (d) (1) (A) (i) (see § 1.421-1 (d) (2) (i)) such amount shall be the amount, if any, by which the option price is exceeded by the lesser of the fair market value of the share at the time the option was granted or the fair market value of the share at the time of such disposition or death. However, if the option qualified under section 421 (d) (1) (A) (ii) (see § 1.421-1 (d) (2) (ii)), such amount shall be whichever of the following amounts is lesser:

(a) The excess of the fair market value of the share at the time of such disposition or death over the price paid under the option, or

(b) The excess of the fair market value of the share at the time the option was granted over the option price, computed as if the option had been exercised at such time.

The amount of such compensation shall be included in the individual's gross income for the taxable year in which the disposition occurs or for the taxable year closing with his death, whichever event results in the application of section 421 (b).

(ii) The application of the special rules provided in section 421 (b) shall not affect the rules provided in section 421 (a) with respect to the individual exercising the option, the employer corporation, or its parent or subsidiary corporation. Thus, notwithstanding the inclusion of an amount as compensation in the gross income of an individual, as provided in section 421 (b), no income results to the individual at the time the stock is transferred to him, and no deduction under section 162 is allowable at any time to the employer corporation or its parent or subsidiary with respect to such amount.

(iii) If the individual exercises a restricted stock option during his lifetime and dies before the stock is transferred to him pursuant to his exercise of the option, the transfer of such stock to the individual's executor, administrator, heir, or legatee is deemed, for the purpose of section 421, to be a transfer of the stock to the individual exercising the option and a further transfer by reason of death from such individual to his executor, administrator, heir, or legatee.

(2) *Basis.* If the special rules provided in section 421 (b) are applicable to the disposition of a share of stock by an individual, the basis of such share in the individual's hands at the time of such disposition, determined under section 1011, shall be increased by an amount equal to the amount includible as compensation in his gross income under section 421 (b). If the special rules provided in section 421 (b) are applicable to a share of stock upon the death of an individual, the basis of such share in the hands of the estate or the person receiving the stock by bequest or inheritance shall be determined under section 1014, and shall not be increased by reason of the inclusion upon the decedent's death of any amount in his gross income under section 421 (b). See example (9) of this paragraph with respect to the determination of basis of the share in the hands of a surviving joint owner.

(3) *Examples.* The operation of section 421 (b) may be illustrated by the following examples:

Example (1). On June 1, 1954, the X Corporation grants to E, an employee, a restricted stock option to purchase a share of X Corporation's stock for \$85. The fair market value of the X Corporation stock on such date is \$100 per share. On June 1, 1955, E exercises the restricted stock option and on that date the X Corporation transfers the share of stock to E. On January 1, 1957, E sells the share for \$150, its fair market value on that date. E makes his income tax return on the basis of the calendar year. The income tax consequences to E and X Corpora-

tion are as follows: (1) Compensation in the amount of \$15 is includible in E's gross income for 1957, the year of the disposition of the share. The \$15 represents the difference between the option price (\$85) and the fair market value of the share on the date the option was granted (\$100), since such value is less than the fair market value of the share on the date of disposition (\$150). For the purpose of computing E's gain or loss on the sale of the share, E's cost basis of \$85 is increased by \$15, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$100. Since the share was sold for \$150, E realizes a gain of \$50, which is treated as long-term capital gain; (ii) The X Corporation is entitled to no deduction under section 162 at any time with respect to the share transferred to E.

Example (2). Assume, in example (1), that E sells the share of X Corporation stock on January 1, 1958, for \$75, its fair market value on that date. Since \$75 is less than the option price (\$85), no amount in respect of the sale is includible as compensation in E's gross income for 1958. E's basis for determining gain or loss on the sale is \$85. Since E sold the share for \$75, E realized a loss of \$10 on the sale, which loss is treated as a long-term capital loss.

Example (3). Assume, in example (1), that the option provides that the option price shall be 90 percent of the fair market value of a share of the stock on the day the option is exercised. On June 1, 1955, when the option is exercised, the fair market value of the stock is \$120 per share so that E pays \$108 for the share of stock. Compensation in the amount of \$10 is includible in E's gross income for 1957, the year of the disposition of the share. This is determined in the following manner. The excess of the fair market value of the stock at the time of the disposition (\$150) over the price paid for the share (\$108) is \$42; and the excess of the fair market value of the stock at the time the option was granted (\$100) over the option price, computed as if the option had been exercised at such time (\$90), is \$10. Accordingly, \$10, the lesser, is includible in gross income. In this situation, E's cost basis of \$108 is increased by \$10, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$118. Since the share was sold for \$150, E realizes a gain of \$32, which is treated as long-term capital gain.

Example (4). Assume, in example (1), that instead of selling the share on January 1, 1957, E makes a gift of the share on that day. In such case, \$15 is includible as compensation in E's gross income for 1957. E's cost basis of \$85 is increased by \$15, the amount includible in E's gross income as compensation. Thus, E's basis for the share is \$100, which becomes the donee's basis, as of the time of the gift, for determining gain or loss.

Example (5). Assume, in example (2), that instead of selling the share on January 1, 1958, E makes a gift of the share on that date. Since the fair market value of the share on that day (\$75) is less than the option price (\$85), no amount in respect of the disposition by way of gift is includible as compensation in E's gross income for 1958. E's basis for the share is \$85, which becomes the donee's basis, as of the time of the gift, for the purpose of determining gain. The donee's basis for the purpose of determining loss, determined under section 1015 (a), is \$75 (fair market value of the share at the date of gift).

Example (6). Assume, in example (1), that after acquiring the share of stock on June 1, 1955, E dies on August 1, 1956, at which time the share has a fair market value of \$150. Compensation in the amount of \$15 is includible in E's gross income for the taxable year closing with his death, such \$15 being the difference between the option price

(\$85) and the fair market value of the share when the option was granted (\$100), since such value is less than the fair market value at date of death (\$150). The basis of the share in the hands of E's estate is determined under section 1014 without regard to the \$15 includible in the decedent's gross income.

Example (7). Assume, in example (6), that E dies on August 1, 1955, at which time the share has a fair market value of \$150. Although E's death occurred within two years from the date of the granting of the option and within six months after the transfer of the share to him, the income tax consequences are the same as in example (6).

Example (8). Assume the same facts as in example (1) except that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and except that E and his wife sold the share on June 15, 1956, for \$150, its fair market value on that date. Compensation in the amount of \$15 is includible in E's gross income for 1956, the year of the disposition of the share. The basis of the share in the hands of E and his wife for the purpose of determining gain or loss on the sale is \$100, that is, the cost of \$85 increased by the amount of \$15 includible as compensation in E's gross income. The gain of \$50 on the sale is treated as long-term capital gain, and is divided equally between E and his wife.

Example (9). Assume the same facts as in example (1), except that the share of stock was issued in the names of E and his wife jointly with right of survivorship, and except that E predeceased his wife on August 1, 1956, at which time the share had a fair market value of \$150. Compensation in the amount of \$15 is includible in E's gross income for the taxable year closing with his death. See example (6). The basis of the share in the hands of E's wife as survivor is determined under section 1014 without regard to the \$15 includible in the decedent's gross income.

Example (10). Assume, in example (9), that E's wife predeceased him on July 1, 1956. Section 421 (b) does not apply in respect of her death. Upon the subsequent death of E on August 1, 1956, the income tax consequences in respect of E's taxable year closing with the date of his death, and in respect of the basis of the share in the hands of his estate, are the same as in example (6). If E had sold the share on July 15, 1956 (after the death of his wife), for \$150, its fair market value at that time, the income tax consequences would be the same as in example (1).

(c) Acquisition of other stock. (1) Section 421 (c) provides that the special rules stated in section 421 (a) and (b), if applicable with respect to stock transferred to an individual upon his exercise of an option, shall likewise be applicable with respect to stock acquired by a distribution or an exchange to which is applicable section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) or a corresponding provision of the Internal Revenue Code of 1939. Stock so acquired shall, for the purpose of section 421, be considered as having been transferred to the individual upon his exercise of the option. A similar rule shall be applied in the case of a series of such acquisitions. With respect to such acquisitions, section 421 (c) does not make inapplicable any of the provisions of section 305, 354, 355, 356, or 1036 (or so much of section 1031 as related to section 1036). Section 421 (c) is applicable only with respect to such acquisitions which occur in any taxable year of the shareholder which begins after De-

cember 31, 1953, and ends after August 16, 1954. As to acquisitions occurring in earlier taxable years, see section 130A (c) of the Internal Revenue Code of 1939.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. If, with respect to stock transferred pursuant to the timely exercise of a restricted stock option, there is a distribution of new stock to which section 305 (a) is applicable, and if there is a disposition of such new stock within two years after the option was granted, such disposition makes section 421 inapplicable to the transfer of the original stock pursuant to the exercise of the option to the extent that the disposition effects a reduction of the individual's total interest in the old and new stock. However, if the new stock, as well as the old stock, is not disposed of within two years after the option was granted, nor within six months after the transfer of the old stock pursuant to the exercise of the option, section 421 is applicable.

(d) Exercise after death. (1) If a restricted stock option is exercised by the estate of the individual to whom the option was granted, or by any person who acquired such option by bequest or inheritance or by reason of the death of such individual, and if such exercise occurs in a taxable year of the estate or of such person beginning after December 31, 1953, and ending after August 16, 1954, section 421 applies to such exercise in the same manner as if such option had been exercised by such deceased individual. Consequently, neither the estate nor such person is required to include any amount in gross income as a result of a transfer of stock pursuant to such exercise of the option. Nor does section 421 become inapplicable if such executor, administrator, or person disposes of the stock so acquired within two years after the granting of such option or within six months after the transfer of the stock pursuant to the exercise of such option. This exception as to the applicability of section 421 does not affect the applicability of section 1222, relating to what constitutes a short-term and long-term capital gain or loss. The executor, administrator, or such person need not exercise the option within three months after the death of the individual to whom the option was granted for section 421 to be applicable. However, the exercise of the option must be pursuant to the terms of the option, and any change in the terms of the option is subject to the rules of § 1.421-4, relating to the modification, extension, or renewal of the option. Section 421 is applicable even though such executor, administrator, or person is not employed by the corporation granting the option, or a parent or subsidiary thereof, either when the option is exercised or at any time. However, section 421 is not applicable to an exercise of the option by the estate or by such person, unless the individual to whom the option was granted met the requirements of § 1.421-3 (b), relating to the employment of such individual, either at the time of his death or within three months before such time. If the option is exercised by a person other than the executor or administrator, or other than a person who acquired the option by be-

quest or inheritance or by reason of the death of such deceased individual, section 421 is not applicable to the exercise. For example, if the option is sold by the estate, section 421 does not apply to an exercise of the option by such buyer; but if the option is distributed by the administrator to an heir as part of the estate, section 421 is applicable to an exercise of the option by such heir.

(2) Any transfer by the estate, whether a sale, a distribution of assets, or otherwise, of the stock acquired by its exercise of the option under this paragraph is a disposition of the stock. Therefore, if section 421 (b) is applicable, the estate must include an amount as compensation in its gross income. Similarly, if section 421 (b) is applicable in case of an exercise of the option under this paragraph by a person who acquired the option by bequest or inheritance or by reason of the death of the individual to whom the option was granted, there must be included in the gross income of such person an amount as compensation, either when such person disposes of the stock, or when he dies owning the stock.

(3) (i) If under section 421 (b) an amount is required to be included in the gross income of the estate or of such person, the estate or such person shall be allowed a deduction as a result of the inclusion of the value of the restricted stock option in the estate of the individual to whom the option was granted. Such deduction shall be computed under section 691 (c) by treating the restricted stock option as an item of gross income in respect of a decedent under section 691 and by treating the amount required to be included in gross income under section 421 (b) as an amount included in gross income under section 691 in respect of such item of gross income. No such deduction shall be allowable with respect to any amount other than an amount includible under section 421 (b). For the rules relating to the computation of a deduction under section 691 (c), see § 1.691 (c)-1.

(ii) The application of subdivision (i) may be illustrated by the following example:

Example. On June 1, 1953, E was granted a restricted stock option to purchase for \$85 one share of the stock of his employer. On such day, the fair market value of such stock was \$100 a share. E died on February 1, 1954, without having exercised such option. The option was, however, exercisable by his estate, and for purposes of the estate tax was valued at \$30. On March 1, 1955, the estate exercised the option, and on March 15, 1955, sold for \$150 the share of stock so acquired. For its taxable year including March 15, 1955, the estate is required by section 421 (b) to include in its gross income as compensation the amount of \$15. During such taxable year, no amounts of income were properly paid, credited, or distributable to the beneficiaries of the estate. However, under section 421 (d) (6) (B) the estate is entitled to a deduction determined in the following manner. E's estate includes no other items of income in respect of a decedent referred to in section 691 (a), and no deductions referred to in section 691 (b), so that the value for estate tax purposes of the restricted stock option, \$30, is also the net value of all items of income in respect of the decedent. The

estate tax attributable to the inclusion of the restricted stock option in the estate of E is \$10. Since \$15, the amount includible in gross income by reason of section 421 (b), is less than the value for estate tax purposes of the option, only 15% of the estate tax attributable to the inclusion of the option in the estate is deductible; that is, 15% of \$10, or \$5. The estate realizes a capital gain of \$50 since the \$15 which is included in the gross income of the estate is added to the \$85 paid for the stock in determining the basis of the stock, but the basis of the stock is not increased by reason of the inclusion of the restricted stock option in the estate (see section 1014 (d)). No deduction under section 421 (d) (6) (B) is allowable with respect to the \$50 capital gain.

(e) *Disqualifying disposition.* The disposition of a share of stock, acquired by the exercise of a restricted stock option, within two years after the granting of the option or within six months after the transfer of the share pursuant to such exercise makes section 421 inapplicable to such transfer of the share. If such disqualifying disposition occurs in a taxable year of the individual which begins after December 31, 1953, and ends after August 16, 1954, the income attributable to such transfer shall be treated by the individual as income received in the taxable year in which such disposition occurs. Similarly, if such disposition occurs in a taxable year of the employer which begins after December 31, 1953, and ends after August 16, 1954, the deduction attributable to the transfer of the share of stock pursuant to the exercise of the option shall be allowable for the taxable year in which such disposition occurs. In such cases, no amount shall be treated as income, and no amount shall be allowed as a deduction, for any taxable year other than the taxable year in which occurs the disposition. However, if the stock was transferred pursuant to the exercise of the option in a taxable year other than the taxable year of the disposition, the extent to which such deduction is allowable shall be determined as if such deduction was claimed for the taxable year of the transfer.

[F. R. Doc. 57-10178; Filed, Dec. 9, 1957; 8:47 a. m.]

TITLE 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

Subchapter E—Mechanical Equipment for Mines;
Tests for Permissibility and Suitability; Fees
[Bureau of Mines Schedule 28]

PART 34—FIRE-RESISTANT CONVEYOR BELTS

REQUIREMENTS GOVERNING INVESTIGATIONS LEADING TO SUITABILITY

There was published in the FEDERAL REGISTER of September 4, 1957 (22 F. R. 7076), a notice and text of proposed amendments to the regulations of Subchapter E of Title 30 Code of Federal Regulations, prescribing requirements governing investigations leading to suitability of Fire-Resistant Conveyor Belts.

Interested persons were allowed 30 days after publication of the notice to

submit written data, views, or arguments concerning the proposed amendments. Inasmuch as no adverse comment or criticism was received, the proposed amendments to the regulations, as set forth below, are hereby adopted without change.

(Sec. 5, 36 Stat. 370, as amended, sec. 212, 66 Stat. 709; 30 U. S. C. 7, 482)

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 2, 1957.

1. Section 34.6 is amended to read as follows:

§ 34.6 *Termination of investigation; disposal of fee and material.* (a) Upon request by an applicant that the Bureau terminate its investigation of the conveyor belt, the Bureau will terminate the investigation, and will return to the applicant the fees paid by him, less such portion thereof as the Bureau determines is applicable to the testing already done.

(b) The Bureau of Mines may retain as its own, for record, all or any part of the material submitted. Any material not retained by the Bureau for record will be returned to the applicant at his expense upon receipt of written request and shipping instructions within one year from the termination or completion of the tests; and thereafter may be disposed of by the Bureau as it sees fit.

2. Paragraph (d) (2) of § 34.10 *Flame test* is amended to read as follows:

(d) *Procedure for flame test.* * * *

(2) The Bunsen burner shall be adjusted to give a blue flame 3 inches in height when using Pittsburgh natural gas or equivalent as a fuel.

[F. R. Doc. 57-10180; Filed, Dec. 9, 1957; 8:48 a. m.]

TITLE 50—WILDLIFE

Chapter I—Fish and Wildlife Service, Department of the Interior

Subchapter F—Alaska Commercial Fisheries
PART 109—COOK INLET AREA

CLOSED SEASON ON KING CRABS

DECEMBER 6, 1957.

Basis and purpose. On the basis of an active research program on king crab in Cook Inlet, it has been determined that the time of moulting can be accurately determined and closure then recommended as has been done successfully at Kodiak.

Therefore, effective immediately upon publication in the FEDERAL REGISTER, § 109.24a is deleted.

Since immediate action is necessary, notice and public procedure on this amendment are impracticable (60 Stat. 237; 5 U. S. C. 1001 et seq.).

(Sec. 1, 43 Stat. 464, as amended; 48 U. S. C. 221)

DONALD L. MCKERNAN,
Director,
Bureau of Commercial Fisheries.

[F. R. Doc. 57-10238; Filed, Dec. 9, 1957; 11:02 a. m.]

PROPOSED RULE MAKING

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 11757; FCC 57M-1212]

TELEVISION BROADCAST STATIONS (EVANSVILLE, IND., AND LOUISVILLE, KY.)

ORDER CONTINUING HEARING

In the matters of amendment of § 3.606 *Table of assignments*, Television Broadcast Stations (Evansville, Indiana, and Louisville, Kentucky) and order directing Evansville Television, Inc., to show cause why its authorization for Station WTVW, Evansville, Indiana, should not be modified to specify operation on Channel 31 in lieu of Channel 7.

Pursuant to a pre-hearing conference held on December 2, 1957, and with the concurrence of counsel for all parties in this proceeding: *It is ordered*, This 3d day of December 1957, that the hearing herein now scheduled for December 9, 1957, be, and the same is hereby, continued to January 27, 1958, at 2 o'clock p. m., in the offices of the Commission in Washington, D. C.

Released: December 4, 1957.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10181; Filed, Dec. 9, 1957; 8:48 a. m.]

FEDERAL POWER COMMISSION

[18 CFR Part 260]

[Docket No. R-162]

STATEMENTS AND REPORTS (SCHEDULES)

SUBMISSION OF DATA BY INDEPENDENT PRODUCERS, REVISION OF FORM; EXTENSION OF TIME

DECEMBER 4, 1957.

Upon consideration of various inquiries and requests for extensions of time for filing report on FPC Form No. 301-1956 required by the Commission's Order No. 198 issued November 19, 1957; An extension is hereby granted to and including January 31, 1958, within which to file report on FPC Form No. 301-1956.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 57-10176; Filed, Dec. 9, 1957; 8:47 a. m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 60]

AIR TRAFFIC RULES

NOTICE OF PROPOSED RULE MAKING

Pursuant to authority delegated by the Civil Aeronautics Board to the Bureau of Safety, notice is hereby given that the Bureau will propose to the Board amendments to Part 60 of the Civil Air Regulations as hereinafter set forth.

Interested persons may participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the Civil Aeronautics Board, attention Bureau of Safety, Washington 25, D. C. In order to insure their consideration by the Board before taking further action on the proposed rules, communications must be received by February 28, 1958. Copies of such communications will be available after March 4, 1958, for examination by interested persons at the Docket Section of the Board, Room 5412, Department of Commerce Building, Washington, D. C.

The proposed amendments to the air traffic rules contained herein stem from the written comments received in response to Civil Air Regulations Draft Release No. 57-11, dated May 23, 1957, and from the discussions which took place at the Air Traffic Rules Conference held in Washington June 13 and 14, 1957. Three items, a proposal to amend § 60.18, "Operation on and in the vicinity of an airport," a proposal to establish certain altimeter setting procedures, and a proposal relating to aircraft lights have not yet been fully developed and are not included in this draft release. As soon as these items have been completed, they will be published in a separate draft release.

Minimum weather conditions for VFR flight. Draft release No. 57-11 contained several recommendations, previously submitted to the Bureau, which advocated certain increases in the minimum VFR weather criteria.

The written comments received by the Bureau and the discussions at the Air Traffic Rules Conference reflect a wide divergence of views on the part of various users of the airspace on this matter.

It is contended on one hand that the currently prescribed minimums do not account for the considerable increase in the speeds of aircraft. Increasing the VFR minimums, it is maintained, will insure greater visibility during VFR operations which will enhance the pilots' ability to avoid a collision, and a greater number of operations will be conducted under the instrument flight rules which will result in separation being provided by air traffic control and will accordingly reduce the collision potential.

On the other hand, the view was expressed, particularly by the general aviation segment, that an over-all increase of the minimum VFR weather criteria would unnecessarily and unduly restrict a vast amount of flight activity. It was contended that the absence of an IFR capability on the part of a large number of pilots and/or airplanes coupled with the number of times that the weather conditions would be below the proposed minimums for VFR flight would seriously limit the utility of the airplane. Several comments pointed out that some of the proposed increases in VFR weather criteria would "simply make unscheduled business flying impractical."

While the views expressed by interested persons of the general aviation segment were in opposition to any over-all increase in the VFR weather criteria, there was recognition of the need for special consideration of the adequacy of the current minimums in certain areas of airspace. For example, there was agreement that there is a valid relationship between speed and visibility and that the current minimums may have to be increased for those flight activities conducted at the higher altitudes where high-speed aircraft typically operate.

The Air Traffic Rules Conference and the written comment received in response to Draft Release No. 57-11 have provided the Bureau with a substantial amount of data and a widespread representation of views and opinions on this subject. In considering all these views, the Bureau has taken into account the wide divergence of opinions and the reasons which formed the basis of such opinions and recognizes the merit in each. In deciding this issue, we are acutely aware of the obligation to continue to develop rules which maintain a sound balance between the public right of freedom of transit in air commerce through the navigable airspace of the United States and the duty to regulate air commerce in such manner as to best promote its safety.

It is the Bureau's view that there are two principal factors which militate against the proposition that the current rules provide adequately for present-day flight operations. These factors are the increase in traffic volume, particularly in terminal areas, and the marked increase of speed of aircraft in recent years.

In applying the principle of "see and be seen" in the air traffic rules of Part 60, the Board, up to the present time, has dealt principally with the meteorological conditions which affect a pilot's ability to observe and avoid other aircraft. These conditions are expressed as visibility and distance from clouds minimums. For some time, however, it has become increasingly apparent that conditions other than weather conditions are being encountered which directly affect a pilot's ability to observe and avoid other aircraft, and they accordingly must be considered in the continued development of the air traffic rules.

In connection with the increase in traffic, the problem of observing and avoiding other air traffic is accentuated where large numbers of aircraft are maneuvering in the vicinity of high density airports. Obviously, the greater the number of aircraft movements in a given area the more difficult it is for a pilot to separate himself from other aircraft. The currently prescribed meteorological conditions that serve as the basic minimums (1,000 feet ceiling and 3 miles visibility) below which an air traffic control clearance must be obtained prior to flight in a control zone is applicable at each airport control zone. The extreme difference in the volume of air-

craft movements at these various airports is a factor which, heretofore, has not been related to the minimum meteorological conditions. The Bureau believes that the minimum weather conditions required for VFR flight at certain major air terminals should reflect consideration of the tremendous volume of aircraft movements typically handled at these airports.

Accordingly, it is proposed that the ceiling and visibility minimums for uncontrolled flight in the control zone of a designated high density airport be increased to 1,500 feet ceiling and 5 miles visibility. This will insure improved visibility and ceiling values which will afford a pilot greater opportunity to avoid air traffic in areas of congestion.

This increase in minimums will require that an air traffic control clearance be obtained prior to flight in the control zone of a high density airport whenever the weather conditions are less than 1,500 feet ceiling and 5 miles visibility. It is not intended that all flights in these high density control zones under these conditions need be equipped with the instruments, extensive communications equipment, or pilot capability ordinarily required for complete IFR operation. A clearance from air traffic control will be required in a control zone in the same manner as the current procedure employed in special VFR operations; i. e., in a control zone with an air traffic clearance. Such requirement will, in these weather conditions, result in more aircraft being controlled by air traffic control, thereby insuring a more positive degree of separation from other aircraft.

While high density airports are best equipped to handle a large volume of air traffic, it is recognized that the proposed increase in ceiling and visibility minimums will place an additional burden on the air traffic control system and on occasion some inconvenience and delay may be encountered. However, these measures are required in order to maintain a safe and orderly flow of air traffic at these major air terminals.

With respect to the problems encountered in the operation of high-speed aircraft, the Board has already adopted amendments to the air traffic rules which increase the minimum VFR weather criteria for all flights in the continental control area. This increase was proposed originally in Draft Release No. 57-11 and again in Draft Release No. 57-15. The Board adopted the amendment, effective December 1, 1957, on which date the minimum VFR criteria for flight in the continental control area became 5 miles flight visibility and the required distance from clouds became 1,000 feet vertically and one mile horizontally.

The Bureau also intends to propose amendment of §§ 60.30 and 60.31 to provide for certain "basic VFR" weather minimums in the former and "special VFR" weather minimums in the latter section. It is expected that this arrangement, coupled with the chart set forth below, will make clear which rules apply in a given operational circumstance. The term "basic VFR" weather conditions refers to those minimum weather condi-

tions required for VFR flight below which all airplanes must be operated in accordance with the instrument flight rules. There is one exception to these basic minimums and it concerns VFR flight operations in control zones. While control zones ordinarily have basic minimums of 1,000 feet ceiling and 3 miles visibility (1,500-5 miles for high density airports), these minimums can be reduced provided a (special) clearance is obtained from air traffic control. This special exception is designed to permit VFR aircraft to transit to or from uncontrolled airspace where the minimum visibility is one mile. This one exception to the basic VFR minimums is referred to as "special VFR." The minimum weather conditions for "special VFR" flight currently require that the flight remain clear of clouds and that the visibility must be at least one mile, except that the visibility may be one-half mile if the restriction to visibility is due to a local surface restriction such as smoke, dust, or blowing snow or sand, and if all turns after take-off and prior to landing and all flights beyond one mile from the airport boundary can be accomplished above or outside the area so restricted.

With respect to the minimum weather conditions specified for special VFR flight in a control zone, the Bureau has carefully reconsidered the provision which allows VFR flight to be conducted in restricted visibility conditions as low as one-half mile and proposes to delete the provision. The comment received by the Bureau indicates that it is believed that any flight operation conducted in visibility conditions of less than one mile is unsafe unless the pilot is able to maintain the altitude and direction of the aircraft by reference to instruments.

In reconsidering the provision which allows VFR flight in one-half-mile visibility, the Bureau has carefully evaluated the original purpose of the provision. It was intended that the one-half-mile exception would provide flexibility to VFR flight operations so that when the weather conditions were generally good, but the visibility was restricted because of some local conditions, aircraft could depart and arrive at an airport, VFR. It was generally contemplated, however, that in local weather conditions of such reduced visibility only pilots having ability to fly on basic instruments would attempt such operations.

The Bureau proposes to delete this one-half-mile exception because this provision is an air traffic rule of Part 60, which is applicable to all pilots and the flexibility inherent in the rule can be exercised by each and every pilot. While there are many pilots who could utilize this flexibility safely because they have the ability to conduct flight without reference to the ground, there is a much greater number of pilots who might be induced to attempt such flight who do not have the ability to fly on instruments. Therefore, the flexibility provided by the rule might unwittingly induce operations by pilots not capable of safe flight in such reduced visibility. In addition, the Civil Aeronautics Board has already established by regulation the principle that in uncontrolled airspace,

a minimum of one-mile visibility is necessary in order that a VFR pilot may properly control the attitude and flight path of his aircraft by visual reference to the ground, and that he may be able to avoid collision with terrain or other surface obstacles. The fact that a VFR pilot may be operating in a control zone, rather than in uncontrolled airspace, does not justify a departure from the basic principle that one-mile visibility is needed to safely operate an aircraft without reference to instruments.

While this action will limit the flexibility of VFR flight operations in restricted visibility conditions, the Bureau believes that such limitation is necessary in the interest of safety. This action will not, however, curtail the flexibility of special VFR flight operations in control zones when the visibility in the control zone is one mile. If an air traffic control clearance is obtained, an aircraft may proceed from, or to, uncontrolled airspace, when the visibility in the zone is less than 3 miles but (with this proposed revision) in no case less than 1 mile.

For the reasons outlined above, the Bureau has concluded that the provision which allows VFR flight to be conducted in visibility conditions of one-half mile is under certain circumstances not conducive to safe flight operations and that such provision should be deleted. It is our view that the irreducible minimum for all VFR flight should be consistent with the minimum of long standing for flight in uncontrolled airspace, and it is, therefore, proposed that one mile be established as the minimum visibility for flights conducted under the Visual Flight Rules.

The Bureau also finds that the minimum flight visibility value of 3 miles currently required for the performance of acrobatic flight in § 60.16 (c) does not adequately reflect consideration of the increased aircraft speeds and traffic density. Taking these factors into account along with consideration of the essential need for these maneuvers to be conducted in visibility conditions which will allow adequate opportunity for pilots to observe and avoid other aircraft, it is proposed to amend § 60.16 (c) so as to require 5 miles flight visibility for the performance of acrobatics.

Cruising altitudes. The principal objective of the proposal to amend the cruising altitude rules is to simplify the current requirements.

Currently effective § 60.32 of Part 60 of the Civil Air Regulations requires the pilot to observe two different sets of rules to determine the appropriate cruising altitude. These rules differ depending on whether the flight is in controlled or uncontrolled airspace. Outside controlled airspace above 3,000 feet and with less than 3 miles visibility, pilots are required to comply with the quadrantal rule. Aircraft in controlled airspace are required to be flown at odd or even thousand-foot altitudes as specified by the Administrator. These rules specify a rather complex system of determining altitudes by direction of flight on colored airways and VOR airways, which is modified by a priority system for colored airways, and

further modified where colored and VOR airways coincide or cross. For irregular portions of airspace designated as control areas there is no altitude specification.

A recommended procedure has been developed which would substitute a single system to apply in all airspace (i. e., in and outside of controlled airspace) below 29,000 feet. The proposed semi-circular rules would require that VFR aircraft (or aircraft on no flight plan) cruise at odd thousands plus 500 feet when on magnetic courses of 0° to 179° inclusive; and at even thousands plus 500 feet when on courses of 180° to 359° inclusive. Aircraft operating on an IFR flight plan with a specific altitude assignment would normally be conducted at odd thousands on magnetic courses of 0° to 179° and even thousands on courses of 180° to 359°. More simply, aircraft operating under VFR rules would cruise at plus 500-foot altitudes and IFR traffic would cruise at cardinal altitudes. It is anticipated that by modifying the odd-even altitude rule on airways and eliminating the quadrantal altitude rule elsewhere the selection of cruising altitudes will be simplified considerably as the pilot need become familiar with but one system for determining cruising altitudes. This would resolve the difficulties of determining proper cruising altitudes along airways, crossing airways, and in the large control areas that have previously been without any designated altitudes. Further, it simplifies the rules to be followed when operating outside of airways and other control areas.

In addition, it is considered advisable to vary the IFR cruising rules from the VFR cruising rules by 500 feet so as to establish a degree of separation between such flights. This is especially important in light of the growing utilization of the one-way airway procedure. This is a practice which has been developed to facilitate and expedite the traffic handling of IFR flights operating between adjacent terminals that are served with multiple airway routes. This procedure involves the utilization of all cardinal altitude levels in a given direction on a particular airway instead of the usual practice of assigning only the odd altitudes or only the even altitudes. This proposal would provide some additional separation between an IFR flight that may be assigned an altitude that is not compatible with those prescribed for VFR flight.

In developing this semi-circular system, consideration was given to flight visibility conditions. The present quadrantal altitude rule in § 60.32 (b) applies only when visibility is less than 3 miles. It is the Bureau's view that the separation provided by the semi-circular rule is of value at all times irrespective of visibility conditions. Therefore, no visibility limits are prescribed.

In order to provide for aircraft operating under the instrument flight rules and cleared by air traffic control to maintain "VFR conditions on top," it is proposed to amend § 60.44 (a) to require specifically that such flights comply with the altitude rules prescribed for VFR flight.

Although this proposal was not discussed at the Air Traffic Rules Conference, because of the limitations of time, the Bureau has received a number of written comments that, with one exception, indicate a general endorsement of the plan.

The Aircraft Owners and Pilots Association has expressed the view that there is no substantial need to revise the current cruising altitude rules. They also point out that the desired 500-foot difference between IFR and VFR flights could be more readily achieved if IFR flights (through normal individual assignments by ATC) utilized only the +500 foot altitudes. This would require no change in the present rules. Furthermore, it is contended that it would obviate the need for any widespread "education program" that would be required if the proposed change were adopted.

The Bureau's objective in this proposal, of course, is not only to provide a separation in altitude between IFR and VFR flights but to revise the cruising altitude rules to achieve a single simplified system which would be applicable to all the airspace; i. e., both in and out of controlled airspace.

The Bureau is convinced that the present cruising altitude rules have grown so complex as to become increasingly ineffective. Furthermore, the proposal has the additional merit of specifying precisely which altitude rules apply to "on-top" flight operations. It also eliminates the requirement for specific values of visibility as is currently required in the quadrantal rule which requires that this rule must be observed only when the visibility is less than 3 miles. These reasons have led to the conclusion that a completely revised cruising altitude rule is definitely in the public interest and would contribute significantly to enhancing the safety of en route flight operations.

In completely revising the cruising altitude rules and in an effort to develop a single simplified system, the Bureau carefully considered the question as to which type of flight operation, the IFR or VFR, should utilize the cardinal altitudes. It is the Bureau's view that, in order to avoid compounding the already complex procedures involved in instrument weather conditions, the cardinal altitudes should be utilized by flights operating in accordance with an IFR flight plan.

Another comment received suggested that the proposed cruising altitude rules be made a recommended practice rather than a mandatory requirement so as to allow a pilot to deviate in certain circumstances such as to avoid the tops of clouds without having to climb 2,000 feet to another appropriate altitude. In this respect, the Bureau believes that unless the observance of specific altitudes are required by rule, the safety values which would stem from such control of the traffic flow would be compromised.

Instrument take-off and landing minimums. The objective of the proposal to amend § 60.46, "Instrument Approach Procedure" is to establish a criteria of ceiling and visibility conditions below which an instrument approach procedure

would be required. The current provisions of this rule are silent as to the specific conditions under which an instrument approach is necessary. In order to dispel the ambiguity regarding this question, the Bureau proposed at the Air Traffic Rules Conference, to require aircraft operating on IFR flight plans to execute an instrument approach whenever the ceiling was below the initial approach altitude and/or when the visibility was less than 3 miles. The comments and discussion on this proposal all pointed out that if exceptions were not provided the flexibility of contact approaches would be lost.

A contact approach is one in which an IFR flight, in IFR weather conditions (after being so cleared by air traffic control) may abandon the prescribed instrument approach procedure and proceed to the airport being guided by the pilot's visual reference to the ground rather than by reference to his instruments.

The Bureau appreciates that this type of approach can contribute significantly to expediting the flow of air traffic without jeopardizing safety; however, it is also recognized that the abandonment of a prescribed approach procedure, under adverse conditions is considered hazardous. Therefore, in promulgating a rule which will retain the desired flexibility, it is essential that certain limitations be established so as to avoid the creation of any undue hazard.

Some of the suggested exceptions have included the "field in sight" proposition which would allow a pilot to abandon the prescribed approach procedure only if he had the airport in sight. Another proposal would limit such approach to those conditions when the pilot had the landing runway in sight.

The Bureau is of the view that the flexibility provided IFR flights should be consistent with the flexibility proposed for VFR flights wherein a VFR flight is permitted, after receiving an appropriate air traffic control clearance, to operate in a control zone when the visibility is one mile and by maintaining flight clear of clouds. To provide for this flexibility, therefore, it is proposed that a pilot must continue his instrument approach until these VFR minimums are reached.

Such a rule would provide, for example, that where an airport is reporting a visibility value of less than 3 miles, but not less than one mile, due to a fog or smoke condition, an IFR flight may, after being cleared by air traffic control, abandon the instrument approach procedure and proceed direct to the airport. Accordingly, whenever a pilot can make an approach to an airport remaining clear of clouds and maintaining one-mile visibility, he is not required by rule to complete an instrument approach procedure.

Section 60.46 presently authorizes the Administrator to prescribe standard instrument approach procedures where an instrument letdown to an airport is necessary. The criteria used in the preparation, approval, and promulgation of these approach procedures have been officially adopted by the military and the Civil Aeronautics Administration and are contained in the "United States Manual

of Criteria for Standard Instrument Approach Procedures."

Since the military does, as a matter of practice, establish and approve instrument approach procedures to airports under their jurisdiction they have requested the Board to recognize this in § 60.46.

So long as these procedures are formulated with identical standards of criteria, the Bureau believes that the provisions of § 60.46 can be amended so as to reflect the procedure employed by the military in establishing and approving instrument approach procedures at military airports.

The Bureau also proposes to include in revised § 60.46 a prohibition against the use of private navigational aids without prior specific authorization by the Administrator. Such a prohibition is deemed necessary in order to minimize the hazards that can arise when an approach procedure is used by pilots other than those for whom the approach procedure was intended. While the owner-operator of a private navigation facility may wish to allow other individuals to utilize a prescribed approach procedure, the Administrator's approval is required so that the necessary requirements of safety are observed.

The proposal to introduce IFR take-off minimums for all aircraft in Part 60 was not supported at the conference by the various users of airspace. Additionally, the written comment received strongly urged that no such restriction be imposed. The majority of airspace users appear to believe that such a prohibition would impose an unnecessary burden on IFR flight operations which heretofore have been conducted safely. Additionally, the IFR take-off minimum procedures utilized by the military are such that they would be adversely affected by the restriction that the proposed rule would impose.

In consideration of the above, and in view of the record, the Bureau believes that the application of minimums for IFR take-offs in the Air Traffic Rules (Part 60) is not required at this time. The Bureau will, however, keep this matter under active consideration and a re-evaluation of the subject will be conducted in the near future.

Definition of control areas. Part 60 of the Civil Air Regulations comprises the air traffic rules and contains definitions pertaining thereto. In an effort to provide a more flexible and effective method of establishing the "floor" of control areas, it is proposed to redefine the term "control area." Currently, the definition of control area specifies that such area extends " * * * upwards from an altitude of 700 feet above the surface * * * ". It has been proposed that this definition be amended so as to read " * * * 700 feet or higher above the surface * * * ". This amendment would then permit the Administrator to fix the "floor" of the control area at that altitude which best suited a particular local area or situation. In designating a control area, the Administrator would not then be required to set the "floor" at 700 feet but could adjust this so as to provide additional freedom for VFR or other uncontrolled flight operations.

The most significant advantage to be obtained from this amendment would be the additional airspace free from the requirements and restrictions of "controlled airspace."

Comments received by the Bureau indicate a unanimous endorsement of this proposal in principle; however, there has been a wide variance of opinions as to the best method by which this proposal may be carried out. Numerous proposals have been received in this respect, one view being that the "floor" should be related to the particular IFR minimum en route altitude (MEA). Another is that the "floor" should be a fixed altitude so as to maintain uniformity and prevent confusion or problems involving notification.

The Bureau has carefully studied and evaluated all the various alternative proposals and has found that each of them contribute to, but do not completely satisfy, the objective in an over-all application. For example, the proposal that the "floor" be related to the minimum en route altitude (MEA) has merit, but only when it is considered with respect to certain civil airways. On the transcontinental airways, the proposal does not achieve the most effective utilization of airspace. On these transcontinental airways, flight is usually conducted at the higher altitudes; however, the MEA is generally set at a relatively low altitude, and as a result the airspace between these two points is virtually lost from use. Establishing the "floor" in relation to the MEA on airways such as these obviously does not take advantage of that airspace lying between the MEA and the higher altitudes normally used by en route traffic on these airways.

Another problem encountered in establishing the "floor" in relation to the MEA is the fact that control areas are not always confined to the limits of civil airways. While control areas are normally designated along civil airways, they are also designated in large irregular and circular configurations so as to encompass all flight paths required for the safe and efficient control of air traffic in terminal areas. These control areas do not have minimum en route altitudes compared to those prescribed for airways. Therefore, the association of "floor" to an MEA could not be applied in these control areas without the added complication of an additional formula.

A control area "floor" related to the MEA would also require a comprehensive re-evaluation and revision of currently prescribed initial approach and transition altitudes which, in many cases, are lower than the MEA. At those airports where the MEA is relatively high, aircraft climbing from or descending to the airport would be forced to operate outside controlled airspace or resort to an inordinately steep flight path. In order to provide controlled airspace for ascents and descents, the control zone could be extended; however, this would defeat the purpose sought by the rule and would actually diminish the airspace available for VFR or flights without clearance in terminal areas. The contribution toward better utilization of airspace, which this procedure would make, would not justify

the operational problems which it would create.

The establishment of a higher fixed figure, such as the suggested 3,000 feet, would have the advantage of uniformity but would generate a multiplicity of other problems. For example, minimum en route altitudes, as well as transition and initial approach altitudes, would have to be raised. While this might be possible in certain areas without difficulty, it could not be applied to certain other areas such as mountainous regions without creating critical altitude problems. It would also preclude the establishment of the "floor" at altitudes above 3,000 feet. On many VOR airways, for example, the MEA is often established at higher altitudes because of the quality of radio reception which is required for accurate navigation and the inability to achieve such at the lower altitudes. The control area "floor" in cases such as this might well be designated at altitudes considerably above 3,000 feet.

The Bureau is of the opinion that any precise or arbitrary definition of a control area would be too inflexible and could not completely accommodate the variety of complex considerations involved, without creating a multitude of other significant problems. It is the Bureau's view in this respect that the most effective and equitable method by which the over-all objective may be accomplished would be to provide the Administrator with the flexible authority to fix the "floor" at 700 feet or at that altitude above that which is found to be best suited to the particular area. The Administrator could then fix the "floor" in a particular area after an analysis of the local air traffic requirements, surrounding terrain, and other controlling factors. The Administrator may well find, and in fact it is expected, that in many areas "floors" could be fixed considerably higher than they could be under a criterion related to the MEA or to a fixed height above the ground. It is recognized, of course, that this method is not without a certain disadvantage. It will result in a nonuniform "floor." While a nonuniform control area "floor" may not of itself be undesirable, it does pose a publication problem.

A pilot who desires to take advantage of the added airspace which may be available under a particular control area must acquaint himself with the area and determine the altitude of the control area "floor." The dissemination of information concerning higher control area "floors" becomes a major factor in the successful application of the proposed rule. The Administrator has advised that this problem is recognized and that steps will be taken to disseminate this information adequately.

Recent creation of the continental control area imposes another factor which must be considered. In order to prevent conflict with this control area, it is necessary that an upper limit be placed on control areas.

The Bureau, after an exhaustive study of the over-all situation, is of the opinion that in order to establish the control area "floor" in the most advantageous and equitable manner, it is advisable that

the definition of control area be amended so as to provide the Administrator with sufficient flexibility to fix the "floor" at 700 feet or higher as the circumstances may dictate, up to the base of the continental control area.

In the light of the number of comments already received which advocate the establishment of a fixed "floor" at 3,000 feet, the Bureau is particularly interested in receiving specific and detailed comment on the probable effect such rule would have on all users of the airspace.

In consideration of the foregoing, notice is hereby given that it is proposed to recommend to the Board that Part 60 of the Civil Air Regulations be amended:

1. By amending § 60.16 (c) to read as follows:

§ 60.16 Acrobatic flight. * * *

(c) When the flight visibility is less than 5 miles, or

2. By amending § 60.30 to read as follows:

§ 60.30 Basic VFR minimum weather conditions. Except as provided in § 60.31 or unless a pilot holds a valid instrument rating, aircraft shall not be flown in weather conditions below those specified herein.

(a) *Ceilings in control zones.* (1) In those control zones which include a designated high density airport, aircraft shall not be flown within such zone when the ceiling is less than 1,500 feet.

(2) In those control zones which do not include a designated high density airport, aircraft shall not be flown within such zone when the ceiling is less than 1,000 feet.

(b) *Clearance from clouds.*—(1) *In controlled airspace.* Aircraft shall not be flown less than 500 feet vertically under, 1,000 feet vertically over, and 2,000 feet horizontally from any cloud formation, except that, in the continental control area, aircraft shall not be flown less than 1,000 feet vertically and one mile horizontally from any cloud formation.

(2) *Outside controlled airspace.* When at an altitude of more than 700 feet above the surface, aircraft shall not be flown less than 500 feet vertically under, 1,000 feet vertically over, and 2,000 feet horizontally from any cloud formation. When at an altitude of 700 feet or less above the surface, aircraft shall be flown clear of clouds.

(c) *Visibility within controlled airspace.*—(1) *Control zones which include a designated high density airport.* When the flight visibility is less than 5 miles, no person shall operate an aircraft in flight within such control zone. When the ground visibility is less than 5 miles, no person shall take off or land an aircraft or enter the traffic pattern of an airport within such zone.

(2) *Control zones which do not include a designated high density airport.* When the flight visibility is less than 3 miles, no person shall operate an aircraft in flight within such control zone. When the ground visibility is less than 3 miles, no persons shall take off or land an aircraft or enter the traffic pattern of an airport within such zone.

(3) *Flight visibility within control area.* When the flight visibility is less

than 3 miles, no person shall operate an aircraft within a control area.

(4) *Flight visibility within the continental control area.* When the flight visibility is less than 5 miles, no person shall operate an aircraft within the continental control area.

(d) *Flight visibility outside controlled airspace.* No person shall operate an aircraft in flight when the flight visibility is less than one mile. However, helicopters may be flown at or below 700 feet above the surface when the flight visibility is less than one mile, if operated at such reduced speed as to give the pilot of such helicopter adequate opportunity to see other air traffic or any other obstruction in time to avoid collision.

NOTE: The minimum weather conditions prescribed in this section for flight in controlled airspace are those within which a pilot is expected to be able to observe and avoid other air traffic. When operating in weather conditions equal to or above those specified herein, irrespective of the type of flight plan an aircraft may be operated under, i. e., IFR or VFR, the primary responsibility for the avoidance of collision rests with the pilot. It should be recognized that the criteria contained herein prescribe the minimums required for VFR flight. Good operating practice requires that regular or continued flight in near minimum weather conditions be avoided.

3. By amending § 60.31 to read as follows:

§ 60.31 Special VFR minimum weather conditions in control zones. When a clearance is obtained from air traffic control, a pilot may operate an aircraft within a control zone when the weather conditions are below the basic minimums specified in § 60.30 subject, however, to the special weather minimums as follows:

(a) *Visibility.* Pilots shall not operate aircraft, other than a helicopter, within a control zone when the ground or flight visibility is less than one mile.

(b) *Clearance from clouds.* Pilots shall not operate an aircraft within a control zone unless clear of clouds.

NOTE: With respect to this section, an air traffic clearance obtained under these provisions does not constitute authority for the pilot to deviate from § 60.17 or any other applicable provision of the Civil Air Regulations.

4. By amending § 60.32 to read as follows:

§ 60.32 VFR cruising altitudes. When an aircraft is operated in level cruising flight at 3,000 feet or more above the surface, the following cruising altitudes (Mean Sea Level) shall be observed:

(a) *Below 29,000 feet.* At an altitude appropriate to the magnetic course being flown as follows:

(1) 0° to 179° inclusive, at odd thousands plus 500 (3,500; 5,500; etc.).

(2) 180° to 359° inclusive, at even thousands plus 500 (4,500; 6,500; etc.).

(b) *At or above 29,000 feet.* At an altitude appropriate to the magnetic course being flown as follows:

(1) 0° to 89° inclusive, at 4,000-foot intervals beginning at 29,000 (29,000; 33,000; etc.).

(2) 90° to 179° inclusive at 4,000-foot intervals beginning at 30,000 (30,000; 34,000; etc.).

(3) 180° to 269° inclusive, at 4,000-foot intervals beginning at 31,000 (31,000; 35,000; etc.).

(4) 270° to 359° inclusive, at 4,000-foot intervals beginning at 32,000 (32,000; 36,000; etc.).

5. By amending § 60.44 to read as follows:

§ 60.44 IFR cruising altitudes. When an aircraft is operated in level cruising flight, it shall be operated in accordance with the following cruising altitudes:

(a) *Within controlled airspace.* At altitudes authorized by air traffic control. In the absence of a specific altitude authorized by air traffic control, aircraft operating "on top" shall be flown at altitudes as specified in § 60.32.

(b) *Outside controlled airspace.* At an altitude appropriate to the magnetic course being flown as follows:

(1) 0° to 179° inclusive, at odd thousands.

(2) 180° to 359° inclusive, at even thousands.

6. By amending § 60.46 to read as follows:

§ 60.46 Instrument approach procedures. Whenever an approach to an airport cannot be initiated or continued in weather conditions equal to or above those prescribed for VFR flight, an instrument approach procedure prescribed and published for that airport by the Administrator or appropriate military authority shall be used. Unpublished instrument approach procedures may be used only when specifically authorized in writing by the Administrator.

NOTE: The VFR weather conditions referred to above include those special minimums of one-mile visibility and clear of clouds as specified for flight within a control zone. Published instrument approach procedures prescribed by the Administrator may be found in the FEDERAL REGISTER and in Part 609 of this title. They also appear in the approach and landing charts of the Coast and Geodetic Survey and in the Airman's Guide. Unpublished instrument approach procedures are written authorizations by the Administrator for specific instances.

7. By amending § 60.60 by revising the definition of "control area" to read as follows:

§ 60.60 Definitions. * * *

Control area. An airspace of defined dimensions, designated by the Administrator, extending upwards from an altitude of 700 feet or higher, above the surface, to the base of the continental control area, within which air traffic control is exercised.

These amendments are proposed under the authority of Title VI of the Civil Aeronautics Act of 1938, as amended, and may be changed in the light of comments received in response to this notice of proposed rule making.

(Sec. 205a, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601-610, 52 Stat. 1007-1012, as amended; 49 U. S. C. 551-560)

Dated at Washington, D. C., December 2, 1957.

By the Bureau of Safety.

[SEAL]

OSCAR BAKKE,
Director.

BASIC VFR MINIMUMS

	Ceiling	Visibility	Distance from clouds	
Control zone which includes a designated high density airport.	1,500 feet ¹	5 miles ¹	500 feet under, 1,000 feet over, 2,000 feet horizontally. ¹	
Control zone.....	1,000 feet ¹	3 miles ¹	500 feet under, 1,000 feet over, 2,000 feet horizontally. ¹	
Control area.....		3 miles.....	500 feet under, 1,000 feet over, 2,000 feet horizontally.	
Continental control area.....		5 miles.....	1,000 feet under, 1,000 feet over, 1 mile horizontally.	
Outside controlled airspace.....		1 mile ²	700 feet or below	Above 700 feet
			Clear of clouds.....	500 feet under, 1,000 feet over, 2,000 feet horizontally.

¹ If traffic conditions permit, air traffic control will issue an air traffic clearance for flight within a control zone when the weather conditions are less than the above. However, no person shall operate an aircraft VFR, irrespective of any clearance, unless the visibility is one mile and the flight can remain clear of clouds.

² Helicopters are excepted from the one-mile requirement when operated at or below 700 feet and at reduced air speed. (See § 60.30.)

[F. R. Doc. 57-10163; Filed, Dec. 6, 1957; 12:30 p. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND
RESERVATION OF LANDS

Civil Aeronautics Administration has filed an application, Serial No. Anch 032066, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws and the mining laws but excepting the leasing of minerals, the disposal of materials, and the issuance of grazing leases. The applicant desires the land for Air Navigation facilities, emergency and intermediate landing fields.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

UMNAK ISLAND

FORT GLENN AND VICINITY

Beginning at the USC&GS Monument "Antler", located at latitude 53°21'21.829" North and longitude 167°54'47.921" West; thence West 13,488.2 feet to Corner No. 1; thence North 9°24'28" East 15,583 feet to Corner No. 2; thence East approximately 30,208 feet to USC&GS Monument "Pustoi", Corner No. 3; thence South 47°33'05" West

6,164.47 feet to USC&GS Monument "Sheep", Corner No. 4; thence South 44°51'48" West 9,380.26 feet to USC&GS Monument "Deer", Corner No. 5; thence South 60°52'54" West 9,368.80 feet to USC&GS Monument "Antler", the point of beginning; containing 7,550 acres, more or less, excluding tidelands. Bearings are true.

BERRY FIELD AND VICINITY

Beginning at USC&GS Monument "Green", located at latitude 53°31'33.746" North and longitude 167°55'33.770" West; thence East 7,275.88 feet to Corner No. 1; thence South 5,000 feet to Corner No. 2; thence South 42°55'30" West 12,035 feet to Corner No. 3; thence West 1,369 feet to Corner No. 4; thence North 9°24'28" East 14,000 feet to USC&GS Monument "Green", the point of beginning; containing in all 1,843 acres, more or less, excluding tidelands. Bearings are true.

Aggregating approximately 9,393 acres.

EDWARD J. HOFFMANN,
Acting Operations Supervisor,
Anchorage.

[F. R. Doc. 57-10165; Filed, Dec. 9, 1957;
8:45 a. m.]

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND
RESERVATION OF LANDS

Civil Aeronautics Administration has filed an application, Serial No. Anchorage 019206, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws including the mining and mineral leasing laws. The applicant desires the land for an enlargement to Air Navigation Site Withdrawal No. 169 at Naknek (King Salmon), Alaska.

For a period of 30 days from the date of publication of this notice, persons

having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

NAKNEK (KING SALMON) AREA

Beginning at Corner 13 ANS No. 169, which is the point of beginning, go North 5,500' to a point; thence East 9,000' to a point; thence South 7,650' to a point; thence West 5,200' more or less to a point on the north shore of Naknek River; thence Northwesterly along the bank of said river 4,800' more or less to the point of beginning.

Containing 1,460 acres, more or less.

EDWARD J. HOFFMANN,
Acting Operations Supervisor,
Anchorage.

[F. R. Doc. 57-10166; Filed, Dec. 9, 1957;
8:45 a. m.]

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND
RESERVATION OF LANDS

Civil Aeronautics Administration has filed an application, Serial No. Fairbanks 013356, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws and the mining laws but excepting the leasing of minerals, the disposal of materials, and the issuance of grazing leases. The applicant desires the land for an addition to Air Navigation Site Withdrawal No. 267 of April 25, 1951, as enlarged by Air Navigation Site Withdrawal No. 10 of July 13, 1954.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

NENANA, ALASKA, AREA—FAIRBANKS MERIDIAN
T. 4 S., R. 8 W., F. M.,
Sec. 1: S½
Sec. 12: NE¼, E½NW¼, NW¼NW¼.

Containing 600 acres.

EDWARD J. HOFFMANN,
Acting Operations Supervisor,
Anchorage.

[F. R. Doc. 57-10167; Filed, Dec. 9, 1957;
8:45 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 12111, 12112; FCC 57M-1217]

K. C. LAURANCE AND PHILIP D. JACKSON

ORDER AFTER SECOND PREHEARING CONFERENCE (SCHEDULING HEARING)

In re applications of K. C. Laurance, Medford, Oregon; Docket No. 12111, File No. BP-10622; Philip D. Jackson, Weed, California; Docket No. 12112, File No. BP-11268; for construction permits.

Appearances: Mr. Charles V. Wayland and Mr. Richard Hildreth of Washington, D. C., on behalf of K. C. Laurance; Mr. Samuel Miller of Washington, D. C., on behalf of Philip D. Jackson; and Mr. Ray Paul of Washington, D. C., on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

1. Pursuant to § 1.841 of the Commission's rules and the order after prehearing conference herein released September 20, 1957, as amended by order dated October 22, 1957, a further prehearing conference was held on November 21, 1957, at which the parties were represented by counsel as shown in the statement of appearances above. The matters discussed and determined upon are shown in Transcript Volume 2, pages 45-97; which is made a part of the record herein; the significant rulings, agreements, and determinations there made are set out in this order.¹

2. Consideration was given to requests on behalf of Laurance for additional information from Jackson concerning:

a. Areas and populations within the predicted pertinent service contours of Station KLAD as that station is proposed to be operated in a pending application for increase of power from 1 kilowatt to 5 kilowatts;

b. Similar information concerning the operation of Station KBOY as proposed in a pending application for increase of power; and

c. Similar coverage information pertaining to Station KAJO.

3. The above requests were opposed by counsel for Jackson and it was held, without making or forecasting rulings upon the admissibility of evidence to be offered by any party, that:

a. The requested information as to KLAD should be supplied on or before Monday, December 2, 1957, because that station is licensed to the applicant Jackson and its operation, existing and proposed, involves overlap with the operation proposed by Jackson in the application here involved;

b. The requested information about KBOY should not be required of Jackson because KBOY is now licensed to an individual other than Jackson, and the coverage and overlap information sought by Laurance is publicly available in the Commission's records and files; and

¹ The Hearing Examiner did not receive a copy of the transcript until the late afternoon of November 29, eight days after the conference, and the preparation of this order has therefore been delayed. Moreover, the attention of counsel for the parties is invited to the evident need for transcript corrections which will be timely ordered pursuant to § 1.848 of the Commission's rules.

c. The requested information about KAJO should not be required of Jackson because that station is licensed to a partnership consisting of Jackson's brother and a brother of the KBOY licensee, and coverage by that station can be ascertained from an examination of the public records and files of the Commission, and although this applicant Jackson proposes in a pending application to acquire a 50 percent interest in Station KAJO, the burden of providing the requested information should not now be apportioned to him.

It was and is emphasized that the rulings made on these matters do not portend the determinations ultimately to be made relating to the burden of proof or the relevance or materiality of evidence pertaining to the matters herein discussed.

4. Counsel for Laurance requested that Jackson be required to provide engineering information concerning the feasibility of an operation at Medford, Oregon on 1310 kilocycles with 1 kilowatt power, which availability was alleged in certain pleadings heretofore filed in this proceeding by Jackson. The request was opposed by counsel for Jackson and was denied for the reason that the alleged availability of another frequency at Medford is not a matter at issue in this proceeding and is not materially related to any question to be determined under the hearing issues as they now exist. On the other hand, counsel for Laurance agreed to furnish certain requested information concerning the availability of a 920 kilocycles operation at Weed, California, in view of the relevance of that matter under Issue 3 which involves the good faith of Jackson in filing his application herein.

5. The direct affirmative case exhibits and evidence for the applicants have been exchanged in accordance with the Order After Prehearing Conference as amended. At the hearing those exhibits will be offered in evidence first on behalf of Laurance and then on behalf of Jackson. Objections to the offered exhibits will be stated and ruled upon on the hearing record. Laurance will be present and available for oral examination if such is desired; such additional direct case evidence for Laurance as may be required and permitted under § 1.841 (b) of the Commission's rules will be thereafter adduced in such a manner as may be then determined, but the direct evidence presentation on behalf of Jackson will then proceed. After presentation of the written case evidence for Jackson, oral examinations of Jackson and of his witness Bitzer will be conducted. The time schedule and methods to be followed in developing such supplementary or rebuttal evidence as the parties desire to offer will be determined upon at the conclusion of the hearing of direct case evidence as herein provided for.

6. It was ascertained that a convenient date for the commencement of the hearing is Monday, December 9, 1957. At that time the parties and the witnesses above named will be present and the hearing will proceed as stated in the foregoing paragraph.

It is ordered, This 3d day of December 1957, that, unless modified for cause or pursuant to the Commission's rules, the foregoing statements and provisions to the extent of their applicability shall govern the conduct of the hearing in this proceeding; and

It is further ordered, That the hearing in this proceeding shall be commenced at 10:00 a. m. on Monday, December 9, 1957, at the offices of the Commission in Washington, D. C.

Released: December 4, 1957.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F. R. Doc. 57-10182; Filed, Dec. 9, 1957; 8:49 a. m.]

[Docket No. 12165; FCC 57M-1218]

DANIEL BOTELHO, JR.

ORDER CONTINUING HEARING

In the Matter of Daniel Botelho, Jr., c/o Seafood Producers Association 60 North Water Street, New Bedford, Massachusetts; Docket No. 12165; suspension of restricted radiotelephone operator permit.

At the request of counsel for the Field Engineering and Monitoring Bureau, and without opposition: It is ordered, This 4th day of December 1957, that the hearing in the above-entitled matter presently scheduled to commence on December 5, 1957, is hereby postponed without date.

Released: December 4, 1957.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F. R. Doc. 57-10183; Filed, Dec. 9, 1957; 8:49 a. m.]

[Docket Nos. 12229, 12230; FCC 57M-1211]

WALTER G. ALLEN AND MARSHALL COUNTY BROADCASTING CO., INC.

ORDER SCHEDULING PREHEARING CONFERENCE

In re applications of Walter G. Allen, Huntsville, Ala.; Docket No. 12229, File No. BP-10871; Marshall County Broadcasting Company, Inc., Arab, Alabama; Docket No. 12230, File No. BP-11088; for construction permits.

It is ordered, This 3d day of December 1957, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a pre-hearing conference pursuant to the provisions of § 1.813 of the Commission's rules, at the offices of the Commission in Washington, D. C., at 2 o'clock p. m., December 17, 1957.

Released: December 4, 1957.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, Secretary.

[F. R. Doc. 57-10184; Filed, Dec. 9, 1957; 8:49 a. m.]

[Docket Nos. 12239, 12240; FCC 57M-1209]
MARVIN KRATTER AND NORTH DAKOTA
BROADCASTING CO., INC.

ORDER SETTING PREHEARING CONFERENCE

In re applications of Marvin Kratter, d/b as Fargo Telecasting Company, Fargo, North Dakota; Docket No. 12239, File No. BPCT-2261; North Dakota Broadcasting Company, Inc., Fargo, North Dakota; Docket No. 12240, File No. BPCT-2357; for construction permits for new television broadcast stations.

It is ordered, This 3d day of December 1957, that, pursuant to the provisions of §§ 1.813 and 1.841 of the Commission's rules, all parties to the above-entitled proceeding or their counsel are directed to appear for a prehearing conference at the offices of the Commission in Washington, D. C., at 10:00 a. m., December 12, 1957, for the purpose of considering, among other things, the matters specified in said sections of the rules.

Released: December 3, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10185; Filed, Dec. 9, 1957;
8:49 a. m.]

[Docket Nos. 12241, 12242; FCC 57M-1216]
RADIO FRANKLIN, INC., AND S. L. GOODMAN

ORDER SCHEDULING ORAL ARGUMENT

In re Application of Radio Franklin, Incorporated, Rocky Mount, Virginia; Docket No. 12241, File No. BP-10915; S. L. Goodman, Bassett, Virginia; Docket No. 12242, File No. BP-11249; for construction permit.

The Hearing Examiner having under consideration a request for oral argument on a petition for leave to amend application filed by S. L. Goodman on November 26, 1957;

It is ordered, This 3d day of December 1957, that an oral argument will be held at 10:00 a. m. on Friday, December 6, 1957.

Released: December 4, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10186; Filed, Dec. 9, 1957;
8:49 a. m.]

[Docket Nos. 12248, 12249; FCC 57M-1214]
ST. ANTHONY TELEVISION CORP. AND
WTVJ, INC.

ORDER FOR PRE-HEARING CONFERENCE

In re applications of St. Anthony Television Corporation, Houma, Louisiana; Docket No. 12248, File No. BPCT-2328; WTVJ, Inc., Houma, Louisiana; Docket No. 12249, File No. BPCT-2354; for construction permit for a new television broadcast station (Channel 11).

A pre-hearing conference in the above-entitled proceeding will be held on Friday, December 13, 1957, beginning at 10:00 a. m. in the offices of the Commission, Washington, D. C. This conference is called pursuant to the provisions of § 1.813 of the Commission's rules and the matters to be considered are those specified in that section of the rules.

It is so ordered, This the 3d day of December 1957.

Released: December 4, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10187; Filed, Dec. 9, 1957;
8:49 a. m.]

[Docket No. 12253; FCC 57M-1210]

GEORGE A. HORMEL, II (KQAQ)

ORDER SCHEDULING PREHEARING CONFERENCE

In re application of George A. Hormel, II (KQAQ), Austin, Minnesota; Docket No. 12252, File No. BP-10673; for construction permit.

It is ordered, This 3d day of December 1957, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a pre-hearing con-

ference pursuant to the provisions of § 1.813 of the Commission's rules, at the offices of the Commission in Washington, D. C., at 10 o'clock a. m., December 19, 1957.

Released: December 4, 1957.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10188; Filed, Dec. 9, 1957;
8:50 a. m.]

[Change List 116]

CANADIAN BROADCAST STATIONS

LIST OF CHANGES, PROPOSED CHANGES AND
CORRECTIONS IN ASSIGNMENTS

OCTOBER 30, 1957.

Notification under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignment of Canadian Broadcast Stations modifying appendix containing assignments of Canadian Broadcast Stations (Mimeograph 47214-3) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

Call letters	Location	Power	Antenna	Schedule	Class	Expected date of commencement of operation
New.....	Corner Brook, Newfoundland.....	500 kilocycles 1 kw.....	DA-N	U	III	Delete assignment.
CFOS.....	Owen Sound, Ontario.....	1 kw.....	DA-2	U	III	EIO 9-15-58 (PO: 1470 kc 1 kw DA-N).
New.....	Drumheller, Alberta.....	910 kilocycles 1 kw.....	DA-1	U	III	EIO 10-15-58.
CHUM.....	Toronto, Ontario.....	1050 kilocycles 5 kw D/2.5 kw N.....	DA-1	U	II	EIO 10-15-58 (PO: 1050 kc 2.5 kw DA-1 H).
New.....	Schefferville, P. Q. (54°47'15" N., 66°49'20" W.).	1230 kilocycles 0.25 kw.....	ND	U	IV	EIO 10-15-58.
CKLN.....	Nelson, B. C.....	1390 kilocycles 1 kw.....	DA-1	U	III	EIO 10-15-58 (PO: 1240 kc 0.25 kw ND IV).
CJOY.....	Guelph, Ontario.....	1430 kilocycles 5 kw.....	DA-1	U	III	EIO 10-15-58 (PO: 1450 kc 0.25 kw ND IV).
New.....	Kittimat, B. C. (54°02'04" N., 128°38'19" W.).	1440 kilocycles 1 kw.....	ND	U	III	EIO: 10-15-58.

1 Correction of item on list No. 115 showing EIO 15-9-57.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10189; Filed, Dec. 9, 1957; 8:50 a. m.]

INTERSTATE COMMERCE
COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 5, 1957.

Protests to the granting of an application must be prepared in accordance with

Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 34339: Liquefied chlorine gas—W. Va., to Tennessee points. Filed

by O. W. South, Jr., Agent (SFA No. A3567), for interested rail carriers. Rates on liquefied chlorine gas, tank-car loads from Charleston, Elk, Owens, South Charleston, South Ruffner, and Dock, W. Va., to Boyce, Chattanooga, North Chattanooga, and Calhoun, Tenn.

Grounds for relief: Market competition.

Tariff: Supplement 72 to Agent H. R. Hinsch's tariff I. C. C. 4664.

FSA No. 34340: *Woodpulp—Southern points to Fall River, Mass.* Filed by O. W. South, Jr., Agent (SFA No. A3568), for interested rail lines. Rates on woodpulp, not powdered, noibn, carloads from specified points in Alabama, Florida, Georgia, Louisiana (east of the Mississippi River), Mississippi, North Carolina, South Carolina, Tennessee, and Virginia to Fall River, Mass.

Grounds for relief: Short-line distance formula.

Tariff: Supplement 36 to Agent Spaninger's tariff I. C. C. 1555.

By the Commission.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F. R. Doc. 57-10170; Filed, Dec. 9, 1957;
8:46 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24SF-2071]

PIXIE BEVERAGE CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

DECEMBER 4, 1957.

I. Pixie Beverage Corporation, a Nevada corporation, 139 N. Virginia Street, Reno, Nevada, filed with the Commission on April 26, 1955, a Notification and Offering Circular relative to a proposed offering of 300,000 shares at \$1.00 per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with by the subject corporation in that it has failed to file on Form 2-A reports of sales as required by Rule 224 of Regulation A, despite requests by the Commission's staff for such reports.

III. It is ordered, Pursuant to Rule 223 (a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given, that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and the notice of the time and place of said hearing will be promptly given by the Commission.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 57-10177; Filed, Dec. 9, 1957;
8:47 a. m.]